

CONGRESSIONAL DIGEST

PRO & CON

October, 1935

Should The Congress Enact a Federal Sedition Law?

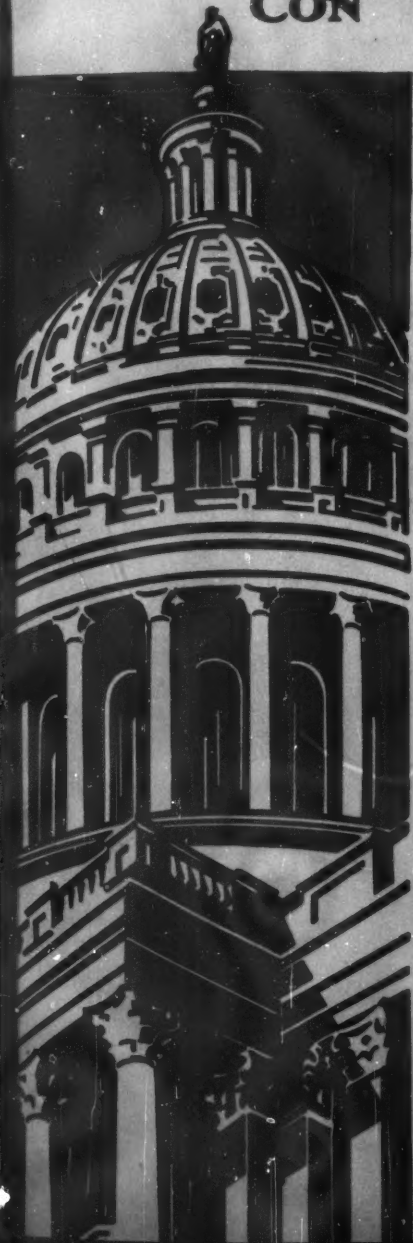
Sedition and Civil Rights in U. S. Law
Provisions of the U. S. Constitution
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Recent Congressional Investigations
Action Taken by the Present Congress
The Administration's Warning to Russia
A Digest of Existing State Laws
Sedition Laws in Other Countries

Does the U. S. Need a Sedition Law?
Discussed Pro and Con



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Should Congress Enact a Federal Sedition Law?

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The CONGRESSIONAL DIGEST

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Volume 14
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The Question of Federal Sedition Legislation

Foreword

ON the calendar of the House of Representatives, awaiting consideration when Congress reconvenes in January next, are two bills that promise to arouse sharp controversy.

One is the Tydings-McCormack bill to punish efforts to incite members of the army and navy to disobedience and the other is the Kramer bill to make the advocacy of the overthrow of the government by force and violence a crime.

While bills of this character have been introduced and reintroduced in both houses of Congress during the past ten years and have had the support of various patriotic organizations they have, heretofore, made little headway.

During the past session of Congress, however, impetus was given to them by increased discussion throughout the country of alien propaganda in the schools and among enlisted men of the army and the navy, particularly the navy and the activities of radical organizations among labor unions and among the unemployed.

Congress Investigates Alien Propaganda

In 1930 the House appointed a special committee to investigate Communist propaganda in America, with Representative Hamilton Fish, Jr., Republican, New York, as chairman.

The Fish Committee held extended hearings and, early in 1931, filed a report of its findings to the House with recommendations for legislation. No action was taken on any of the bills introduced as a result of the findings of the Fish Committee.

In 1934, as a result of protests against Nazi and Fascist activities the House appointed a special committee to investigate Nazi and other un-American activities, and Representative John W. McCormack, Democrat, Massachusetts, was named chairman.

The Pending Anti-Sedition Bills

The McCormack Committee also held extensive hearings and made a report to Congress early in January, 1935.

Of the bills introduced as a result of the findings of the McCormack Committee, one, introduced by Mr. McCormack, was given special consideration by the House Committee on Military Affairs, and another, introduced by Representative Charles Kramer, Democrat, California, was given consideration by the House Committee on the Judiciary.

While the McCormack bill, aimed to prevent subversive tactics among the members of the army and navy was being considered by the Committee on Military Affairs, the Senate passed a bill by Senator Millard F. Tydings, Democrat, Maryland, for the same purpose. The Committee therefore amended the Tydings bill and substituted it for the McCormack bill, and reported it to the House.

The Committee on the Judiciary reported the Kramer bill. In the case of each bill, a minority report was filed.

In the District of Columbia bill, passed by both houses, is a provision prohibiting the teaching of Communism in the public schools of the District.

Alien Deportation Bills

Several bills covering the deportation of aliens engaged in un-American propaganda were introduced and reported from committees.

This number of the DIGEST, however, is confined to a discussion only of those having to do with seditious or subversive utterances.

The deportation bills strike not only at alien propagandists but also at alien criminals who are found guilty of other offenses.

The alien deportation bills will be dealt with in the November number of the DIGEST.

Sources of Foreign Propaganda

According to the findings of the McCormack Committee alien propaganda in America comes from three sources—the Italian Fascists; the German Nazis and the Russian Communists.

While the committee found that the Nazis and the Fascists had from time to time been guilty of propaganda to solidify Germans and Italians in America in support of their native countries, they had not been guilty of attempts to advocate making America Nazi or Fascist.

The Communists, on the other hand, the committee found guilty of continued activity toward increasing their membership in America to the end that the American Government might be overthrown by force and a Communist Government established in its place.

Because of this the anti-propaganda legislation took the turn of strictly anti-Communist legislation, and the bills reported were those aimed directly at Communist propaganda in general and the American Communist party in particular, as being a subsidiary of the Third International, or Comintern, whose headquarters are in Moscow.

The proponents of the Tydings-McCormack bills have maintained from the first that all the Communist propaganda in America was being conducted under the direction of the Comintern.

After the bills had been reported their contention was supported by the President in his protest to the Russian Government, following the Seventh World Congress of the Comintern which met in Moscow late in July.

The indications are, therefore, that in the discussion of the bills when they are taken up by the House at the next session of Congress, Communism will be the major point at issue, with but minor attention paid to Nazism and Fascism, so far as the arguments over alien propaganda are concerned.

Study Outline for the Classroom

Provisions of the Constitution

Students of government desiring to consider the Kramer and Tydings-McCormack bills, should begin with the Constitution to see where Congress obtains its authority to enact legislation of the type proposed.

Various Articles and Amendments of the Constitution have been cited by proponents and opponents of the bills. These will be found listed on page 227.

Chronology of Sedition Legislation

Immediately following is a chronological record of the various Acts Congress has passed to deal with sedition from the famous Sedition Act of 1798 down to the Espionage Act of 1917, as well as a record of the various efforts to pass similar legislation during recent years.

On page 231 will be found a resume of the exchange of notes between the Government of the United States and the Government of Soviet Russia concerning recent activities of the Comintern.

On page 232 will be found a description of the work of the Comintern as furnished to Congress in the Fish Committee report.

A summary of the existing state laws against anarchy, sedition, disloyalty, etc., will be found beginning on page 233. In many state legislatures new laws have been

proposed during the last year or so but most of them are still in the process of consideration.

On page 234 will be found a list of the anti-sedition laws of the principal countries outside the United States.

Arguments For and Against the Pending Bills

In the Pro and Con Section the principal arguments for and against the anti-sedition bills before Congress will be found.

The main arguments already advanced, which will undoubtedly be repeated on the floor of the House during the coming session are the following.

The supporters of the bill argue:

1. The Constitution of the United States not only gives Congress the power, but fixes upon it the responsibility to guarantee to its citizens and to the states a Republican form of Government.

2. The enactment of the proposed laws are necessary because a foreign agency, the Communist party, is engaged through its American branch in activities, the avowed purpose of which is to foment an armed revolution for the overthrow of the American Government.

3. Although the Communists have not yet gone so far as to resort to the use of force against the Government their systematic campaign to break down the morale of the army and the navy; their work in organizing young people to practice subversive tactics and their fomenting of labor troubles and troubles among the unemployed to carry out their ultimate aim justifies legislation to make these activities a crime.

4. Making the advocacy of the overthrow of the Government a crime is not a violation of the right of freedom of speech guaranteed by the Constitution nor of any other right so guaranteed, since no loyal citizen would abuse those rights by advocating the overthrow of the Government by force, and therefore would not be affected by the proposed legislation.

5. The passage of the proposed bills is necessary because existing criminal statutes covering sedition, etc., cannot be applied unless an overt act is committed.

The opponents of the bill argue:

1. The proposed bills are in direct violation of the guaranty of free speech and other civil rights guaranteed by the Constitution.

2. The activities of the Communists in America are having no effect whatever on the general mass of the American people and the application of the police laws of the states can easily control any serious activities they may engage in.

3. Passing laws to curb the wild and futile talk of the Communists by making their advocacy of their aims a crime would be running too great a risk of doing away with the American traditional right of free speech, since it would be putting too much power in the hands of the Government, which power might be abused.

4. The bills as drawn are too sweeping not to be dangerous and are more like Nazi or Fascist laws than American laws.

5. There are ample laws on the statute books, both Federal and State to care for any offenses subversive propagandists may commit.

Classes using the CONGRESSIONAL DIGEST Plan for Teaching Government may use verbatim text of the Kramer and Tydings-McCormack bills found on page 231.

Treason, Sedition and Civil Rights in the U. S. Law

I. What the Constitution Provides

II. Acts of Congress Since 1798

I. What the Constitution Provides

1787-1790—The Constitution of the United States was written in 1787 and ratified in 1788.

In 1789 the First Congress submitted to the states the first ten Amendments, generally known as the Bill of Rights, and they were ratified in 1790, thus becoming part of the Constitution. They were designed to guarantee to the citizens certain personal rights and liberties by specifically providing that these rights and liberties could not be taken away by even the supreme law of the land.

Following are the provisions of the Constitution which are being cited by proponents and opponents of the bills pending in Congress prohibiting the advocacy of forcible overthrow of the Government and for the suppression of attempts to incite members of the military and naval forces to disobedience:

Article I, Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article I, Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States. * * *

This provision guarantees to the people of the United States a representative or parliamentary form of government, the makers of its laws to be chosen by a vote of the people.

Article II, Paragraph 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected. * * *

This provision guarantees that the Chief Executive Officer of the United States in charge of the administration of the laws shall be elected by the people for a term of office limited to four years.

Article III, Section 3. Treason against the United States, shall consist only in levying War against them, or, in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work

Corruption of Blood, or Forfeiture except during the life of the Person attained.

This provision defines treason as an overt act, safeguards citizens against an irresponsible charge of treason and limits the punishment. (See Glossary on page 255.)

Article IV, Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

This provision is cited as giving the Congress power to pass legislation to prohibit advocacy of the forcible overthrow of the Government.

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Opponents of pending bills prohibiting advocacy of the forcible overthrow of the Government maintain that this Amendment will be violated by Congress if these bills are passed.

Amendment IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The opponents claim that the passage of the pending bills will inevitably result in unlawful searches.

Amendment V. No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This Amendment is cited by proponents of the pending legislation as one of the guaranties of the Constitution which justifies legislation prohibiting advocacy of the forcible overthrow of the Government and the establishment of a dictatorship.

Amendment XIV. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This Amendment is cited by opponents of proposed sedition legislation pending in various states.

II. Acts of Congress Since 1798

a. The Alien and Sedition Acts

1798—The Alien and Sedition Acts were passed by the Fifth Congress during the Administration of John Adams, the second President.

At this time the United States was involved in controversies with France. The Federalist party, to which Adams belonged, maintained that the bills were necessary to suppress French activities in the United States. The Republican (now Democratic) party, of which Thomas Jefferson, Vice-President, was the leader, maintained that the bills were aimed at hurting Jefferson's candidacy for the Presidency.

There were four bills in the group:

1. *A Naturalization Act*, providing that, in order to become a citizen of the United States, a foreigner must have resided in the United States for 14 years and must have declared his intention 5 years before the date of his admission to citizenship. (The previous law provided for 5 years' residence with declaration 3 years in advance.) The bill provided, also, that alien enemies were not admissible to citizenship. The Act was repealed in 1802.

2. *An Alien Deportation Act*, authorizing the President to order out of the country all such aliens as he considered dangerous to the peace and safety of the country, or such aliens as he should suspect of being concerned in treasonable or secret machinations against the Government. The life of this Act was limited to two years. It lapsed in 1800.

3. *An Alien Enemies' Act*, which provided that upon proclamation of war by the President citizens of an enemy country residing in the United States should be liable to arrest and removal as alien enemies.

4. *A Sedition Act* providing for the fine and imprisonment of anyone making an unlawful attempt to oppose the Government, the duration of which was limited to something less than three years, and which lapsed at the end of that period. It was approved July 14, 1798, to continue in force until March 1, 1801. No effort was made to have it continued beyond that period.

While these four acts are grouped together in most historical references, the first three are not being considered in the discussions of the sedition legislation, now before Congress.

The Sedition Act, on the other hand, is being constantly referred to.

The full text of the Sedition Act follows:

"Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the Government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the Government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy,

threatening, counsel, advise, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be held to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

"Section 2. *And be it further enacted*, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the Government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said Government or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the Constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

"Section 3. *And be it further enacted and declared*, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defense, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

"Section 4. *And be it further enacted*, That this act shall continue and be in force until the third day of March, 1801, and no longer: *Provided*: that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offense against the law, during the time it shall be in force."

b. The Civil War Acts

1861-65. During the Civil War the Seditious Conspiracy Act, now Section 6 of Title 18 of the United States Criminal Code, and the Inciting to Rebellion Act, now Section 4 of Title 18 of the Criminal Code, were passed. The text of these two laws follows:

Title 18, U. S. Criminal Code, Section 6:

Seditious Conspiracy: If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than \$5,000, or imprisoned not more than six years, or both.

Title 18, U. S. Criminal Code, Section 4, provides:

Inciting Rebellion or Insurrection: Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be imprisoned not more than ten years, or fined not more than \$10,000, or both; and shall, moreover, be incapable of holding any office under the United States.

From the period immediately following the Civil War to America's entry into the World War no anti-sedition legislation was enacted by Congress.

c. The World War Espionage Acts

1917-1918. On April 6, 1917, Congress declared war against Germany. On June 15, 1917, Congress passed the Espionage Act and on May 16, 1918, amended it by adding to the offenses originally listed, several others.

All but two of the provisions of the Espionage Act are in force only when the United States is at war. Offenses forbidden by the Act may be summarized as follows:

1. Willfully making or conveying false reports or statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies.
2. Willfully causing or attempting to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces.
3. Willfully obstructing the recruiting or enlistment service of the United States.
4. Conspiring to obstruct recruiting or enlistment.
5. Saying or doing anything with intent to obstruct the sale of United States bonds, except by way of bona fide and not disloyal advice.
6. Uttering, printing, or writing any profane, scurrilous or abusive language or language intended to cause contempt, scorn, contumacy or disrepute regarding the form of government, the Constitution, the flag, or the uniform of the United States.
7. Using language intended to incite resistance to the United States or to promote the cause of its enemies.
8. Urging any curtailment of production of any things necessary to the prosecution of war with intent to hinder its prosecution.
9. Advocating, teaching, defending or suggesting the doing of any of the above acts.
10. Uttering words or doing acts supporting or favoring supporting or favoring the cause of any country at war with the United States or opposing the cause of the United States therein.

The above listed offenses are punishable by a fine of not more than \$10,000 or imprisonment for not more than 20 years. A person guilty of harboring or concealing a person guilty of these offenses is punishable by a fine of not more than \$10,000 or imprisonment for not more than 2 years or both.

These portions of the act are applicable only when the United States is at war.

The Act, however, provides also, that the Postmaster General upon evidence satisfactory to him that any person or concern is using the mails in violation of the Act, may have all mail addressed to the person or concern returned to the sender. This provision remains in force as part of the postal regulation laws. The penalty, for its violation is the same as the penalty for all the laws against the sending of unmailable matter through the mails, a fine of \$5,000 or imprisonment for 5 years, or both.

The other provision of the Espionage Act which is in force in peace time is the provision which authorized the issue of search warrants for the seizure of property used as a means of committing a felony. This applies to all felonies as well as to the acts classified in the Espionage Act as wartime offenses.

d. Post War Legislative Efforts

1919-1920. During the post-war period a number of bills were introduced in Congress designed to check anarchistic and revolutionary propaganda, but none was passed. Investigations by Congressional Committees of Russian propaganda were conducted and in 1919 the bill by Senator Overman of North Carolina, to make most of the provisions of the Espionage Act applicable in peace times was reported by a subcommittee of the Senate Committee on the judiciary, but did not pass.

In 1920 a bill by Senator Sterling of South Dakota passed the Senate but did not pass the House. Instead, the House Committee on the judiciary substituted a bill by Representative Graham, but it failed of passage.

There were any number of "anti-Red" bills introduced during this period.

1921. Representative Eslick of Tennessee made an effort to obtain legislation to make the provisions of the Espionage Act covering advocacy of the overthrow of the Government applicable in peace time. A meeting of patriotic organizations was held in Washington at which various bills aimed at alien propaganda were endorsed. These included bills to punish advocacy of the forcible overthrow of the Government and alien deportation bills, but Congress took no action.

e. The Fish Investigating Committee

1930-31. On May 22 the House adopted a resolution for the appointment of a special committee to investigate Communist activity in the United States. Representative Hamilton Fish, Jr., of New York was named chairman of the committee, which became generally known as the Fish Committee. The committee held extensive hearings and filed its report to the House on January 17, 1931.

In addition to a number of recommendations for the passage of bills amending the immigration laws and bills for the deportation of alien communists, the Fish Committee recommended:

1. Amendment of the postal laws to declare non-mailable all publications advocating revolutionary communism and the amendment of the interstate commerce laws to prohibit the interstate transportation of such publications.
2. The enactment of a Federal law to prosecute Communists or other persons, organizations or publications for spreading false rumors for the purpose of causing runs on banks.
3. The enactment of legislation declaring illegal the Communist party in the United States and any other organization advocating the overthrow of the Republican form of Government, or any organization affiliated with the Communist International at Moscow.
4. That the Treasury Department request of the Soviet Government that Treasury agents be permitted to inspect Russian lumber camps and report back whether Russian lumber and wood pulp for export to the United States is produced by convict labor and as such, subject to being prohibited from entry into the United States under the provisions of the Tariff Act of 1930.

These recommendations were contained in the majority report signed by Representatives Fish, Carl G. Bachman, of West Virginia, Edward E. Eslick, of Tennessee, and Robert S. Hall of Mississippi.

Representative John E. Nelson, of Maine, filed a minority report in which he recommended, in addition to the tightening of the immigration and deportation laws:

1. All necessary authorization and appropriations to enable the Department of Justice to follow up all radical activities and cooperate with the state governments as it did during the post-war period.

2. Constant and careful inspection by the Postoffice authorities of all radical publications offered for transmission through the mails.

3. The encouragement of organized labor.

In conclusion, Representative Nelson said:

"The solution of this problem lies in the wisdom of our legislators and in the unselfishness of our industrialists. In proportion as we work out our economic justice here in America and so order our social system that labor shall share in the economic life of the nation as fully and fairly as it now shares in its social and political life, in just that proportion will radicalism fall of its own inanition and the threat of Communism cease to disturb us."

1932-33. Although various bills were introduced to carry out the recommendations of the Fish Committee no action was taken on any of these, beyond reports from Committees in certain instances.

f. The McCormack Investigating Committee

1934. On March 20 the House adopted a resolution for the appointment of a special committee to investigate Nazi and other propaganda.

The Committee was specifically instructed to conduct "an investigation of (1) the extent, character and objects of Nazi propaganda in the United States, (2) the diffusion within the United States of subversive propaganda that is instigated from foreign countries and attacks the principle of the form of government of the United States, and (3) all other questions thereto that would aid Congress in any necessary remedial legislation."

The members of the committee were Representatives John W. McCormack, Massachusetts, *Chairman*; Samuel Dickstein, New York, *Vice-Chairman*; Carl M. Weideman, Michigan; Charles Kramer, California; Thomas A. Jenkins, Ohio, and U. S. Guyer, Kansas.

In its report made on February 15, 1935, the McCormack Committee, stated that it had found evidence that the Nazi movement had made considerable headway in its object to consolidate persons of German birth, or descent, if possible, into one group, subject to dictation from abroad. In these efforts, the report states, the Nazis used all kinds of efforts and influence short of violence. The disclosures by the committee, the report declares, resulted in checking the Nazi movement in America.

The committee reported that there were isolated efforts toward the establishment of Fascism in America, but they had made no progress. Additional evidence on Fascist efforts reaching the committee just before its termination on January 3, 1935, were turned over to the Department of State for investigation.

The committee reported that the Communist Party of the United States is not a national party, concerned

primarily with American affairs, but has for its objective the overthrow by force and violence of the republican form of government.

"The specific purposes, by Communist admission, are to be achieved," the report states, "not by peaceful exercise of the ballot under constitutional right, but by revolutionary upheavals, by fomenting class hatred, by incitement to class warfare and by other illegal, as well as by legal, methods. The tactics and specific stages to be followed for the accomplishment of this end are set forth in circumstantial detail in the official program of the American Communist Party adopted at the convention held at Cleveland on April 2 to 8, 1934."

"The American Communist Party is affiliated with the Third International, which was created by officials of the Soviet Government and is still housed in Moscow with governmental approval and cooperation. This affiliation is not one of general sympathy or broad uniformity of purpose and program; it is of a definitely organic character involving specific jurisdiction on the part of the governing body over the Communist Party of the United States."

"The executive secretary of the Communist Party of the United States testified that this committee that his party was 'a section of the Communist International'; that it participates in all the gatherings which decide the policies of the Communist International and sends delegates to the various conferences in Moscow. This admission is confirmed by the records available."

The committee finally recommended that Congress enact legislation requiring the registry with the Department of State of all propaganda organizations or agencies representing any foreign political, industrial, commercial or government organization; legislation giving the Department of Labor wider powers in the matter of deporting aliens; legislation making it unlawful to incite the members of the army and navy to disobedience; legislation that will compel witnesses to testify and produce papers on demand from Congressional committees and legislation to make it unlawful to advocate changes in the American Government by force and violence.

g. Action by the Present Congress

1935. During the first session of the Seventy-fourth Congress, which began on January 3, a number of bills aimed at subversive propaganda were introduced in both the Senate and the House.

Of these, but three were acted upon: (1) a bill making it a crime to advocate the overthrow of the United States Government by force or violence; (2) a bill to make it a crime to incite members of the army or navy to disobedience, and (3) a bill forbidding the teaching of Communism in the public schools of the District of Columbia.

On March 1 and March 19 a special subcommittee of the House Committee on Military Affairs held hearings on H. R. 5845, introduced by Representative John W. McCormack, Massachusetts, Democrat, who was chairman of the Special Committee investigating alien propaganda in 1934, to prohibit attempts to incite the military forces to disobedience.

Before the Military Affairs Committee made its re-

Continued on next page

port, the Senate passed S. 2253, introduced by Senator Millard F. Tydings, Maryland, Democrat, for the same purpose as the McCormack bill. The Tydings bill was reported by the Senate Committee on Naval Affairs on May 24 and passed by the Senate on June 24.

On July 22 the House Committee on Military Affairs reported the Tydings bill, amended, but it was not considered by the House.

Following is the text of S. 2253 as reported by the Committee:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever with intent to incite disaffection, advises, counsels, urges, or solicits any member of the Army and the Navy of the United States, to disobey the laws or regulations governing the Army and Navy, or whoever publishes or distributes any book, pamphlet, paper, print, article, letter, or other writing which advises, counsels, urges, or solicits any member of the Army and the Navy of the United States to disobey the laws or regulations governing the Army and the Navy, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than two years, or both.

"Sec. 2. Any book, pamphlet, paper, print, article, letter, or other writing of the character described in section 1 of this Act may be taken from any house or other place in which it may be found, or from any person in whose possession it may be, under a search warrant issued pursuant to the provisions of title XI of the Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917 (40 Stat. 228; U. S. C., title 18, ch. 18.)"

On May 22 a subcommittee of the House Committee on the Judiciary held hearings on two bills introduced by Representative Charles Kramer, Democrat, of California, H. R. 4313, to make it a crime to advocate the overthrow of the government by force and violence, and H. R. 6427, to prohibit statements and publications advocating the overthrow of the government.

On August 21 the Committee on the Judiciary reported H. R. 6427, the full text of which follows:

"Be it enacted by the Senate and House of Representatives in Congress assembled, That any person who knowingly and willfully shall advocate the overthrow of the Government of the United States by force or violence shall, upon conviction thereof, be punished by a fine of not more than \$5,000, or imprisonment for not more than five years, or both."

Both these bills, generally referred to as the Tydings-McCormack Bill and the Kramer Bill, are on the House calendar awaiting action at the next session of Congress, which will convene in January 1936.

Final action was taken by Congress, however, on one phase of the drive against Communism. The District of Columbia Appropriation bill, approved June 14, under the section covering the employment of teachers in the public schools, contains this provision:

"Hereafter no part of any appropriation for the public schools shall be available for the payment of the salary of any person teaching or advocating Communism."

The Roosevelt Administration's Recent Warning to Soviet Russia

Formal Complaint Is Registered Against Communist Activities in America

In late July and early August the Communist International held its Seventh World Congress at Moscow. During the course of its proceedings Earl Browder, general secretary of the Communist party in the United States, and other American delegates, made speeches in which they described the work they were doing in the United States, which, they declared, included fomenting strikes, organizing mass movements of the unemployed and extending Communist influence to farmers, students, white collar workers, professors and the intelligentsia. The general strike in San Francisco in 1934 was cited as one of the principal achievements.

Also the Communist International adopted a resolution urging the members of the League of Communist Youth in all capitalist countries to join all "bourgeois" democratic, reformist and Fascist parties, as well as religious bodies, trade unions and cultural and sport groups and "to carry on within them a systematic struggle to influence the masses of youth and mobilize them to oppose militarization and forced labor camps."

The general proceedings of the Communist International Congress brought out so clearly the close adherence to its authority of the American Communist party that President Roosevelt on August 25 sent a sharp protest to the Soviet Government through William C. Bullitt, American Ambassador at Moscow.

The protest charged that the action of the Communist International was an interference with American domestic affairs and a direct violation of a written pledge given to President Roosevelt on November 16, 1933, by Maxim Litvinov, then Soviet Commissar for Foreign Affairs and now Soviet Ambassador to the United States, coincident with the establishment of diplomatic relations between the United States and Soviet Russia.

In that document, M. Litvinov, pledged his Government:

"Not to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which has as an aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in, the political or social order of the whole or any part of the United States, its territories or possessions."

After quoting the Litvinov pledge, Ambassador Bullitt, in his formal note, wrote:

"In view of the fact that the aim and activity of an organization, such as the Congress of the Communist International, functioning on the territory of the Union of Soviet Socialist Republics, cannot be unknown to the Government of the Union of Soviet Socialist Republics, it does not seem necessary to present material to show the aim of the Congress of the Communist International with respect to the political or social order of the United States or to quote from the published proceedings of the

Congress to show its activity relative to the internal affairs of the United States, as evidenced in the discussion at the Congress of the policies and activities of the communist organization in the United States and the determination and formulation by the Congress of policies to be carried out in the United States by the communist organization in the United States. Nor does it appear necessary to list the names of representatives or officials of the communist organization in the United States who were active at the above mentioned Congress and whose admission into the territory of the Union of Soviet Socialist Republics was, of course, known to the Government of the Union of Soviet Socialist Republics.

"As I have pointed out to the People's Commissar for Foreign Affairs when discussing earlier violations of the undertaking of November 16, 1933, the American people resent most strongly interference by foreign countries in their internal affairs, regardless of the nature or probable result of such interference, and the Government of the United States considers the strict fulfillment of the pledge of non-interference an essential prerequisite to the maintenance of normal and friendly relations between the United States and the Union of Soviet Socialist Republics.

"The Government of the United States would be lacking in candor if it failed to state frankly that it anticipates the most serious consequences if the Government of the Union of Soviet Socialist Republics is unwilling, or unable, to take appropriate measures to prevent further acts in disregard of the solemn pledge given by it to the Government of the United States."

On August 27, Commissar for Foreign Affairs Krestinski, in a reply to Ambassador Bullitt, wrote:

"It is certainly not new to the Government of the United States that the Government of the Union of Soviet Socialist Republics cannot take upon itself and has not taken upon itself obligations of any kind with regard to the Communist International.

"Hence the assertion concerning the violation by the Government of the Union of Soviet Socialist Republics of the obligations contained in the note of November 16, 1933, does not emanate from obligations accepted by both sides in consequence of which I cannot accept your protest and am obliged to decline it."

No formal reply was made by the American Government to Commissar Krestinski's note, but on August 31 Secretary of State Hull issued a press statement in which he said:

"In view of the plain language of the (Litvinov) pledge, it is not possible for the Soviet Government to disclaim its obligation to prevent activities on its territory directed toward overthrowing the political or social order in the United States. And that Government does not and cannot disclaim responsibility on the ground of inability to carry out the pledge, for its authority within its territorial limits is supreme and its power to control the acts and utterances of organizations and individuals within those limits is absolute.

"It remains to be seen to what extent the intention indicated by the Soviet Government's reply, which is directly contrary to 'the fixed policy' declared in its pledge, will be carried into effect. If the Soviet Government pursues a policy of permitting activities on its territory involving interference in the internal affairs of the United States, instead of preventing such activities, as its

written pledge provides, the friendly and official relations between the two countries cannot but be seriously impaired. Whether such relations between these two great countries are thus unfortunately to be impaired and co-operative opportunities for vast good to be destroyed, will depend upon the attitude and action of the Soviet Government."

No further statements by either the American or Soviet Governments had been made up to the time this number of the DIGEST went to press.

A Description of the Comintern or Third International As Reported to Congress

by Former Representative John E. Nelson,
Member, Fish Investigating Committee

WE find in Russia three distinct yet interrelated organizations: First, the Russian Communist Party; second, the Soviet Government; and third, the Third International, or Comintern.

The Russian Communist Party is the only legal party in the country. All other parties are outlawed, and political freedom is proscribed. Both the Soviet Government and the Third International (also called the Communist International) are creatures of the Russian Communist Party which orders and directs their actions. The central executive committee of the Russian Communist Party dominates the Soviet Government through its subcommittee of 10 members known as the Politbureau, whose members as a rule also hold important offices in the Soviet Government and in the Third International. For instance, Joseph Stalin, virtual dictator of all Russia, is at one and the same time general secretary of the central committee of the Russian Communist Party, member of the central executive committee of the Soviet Government, and member of the presidium and of the executive committee of the Third International.

The Third International (or Communist International) was created in March, 1919. It is the governing body of all communist activities throughout the world, and is made up of groups from many countries, including the United States. It meets at Moscow to discuss policies, activities, and propaganda in various countries. The directing force of the Third International is supposed to be its presidium, a small bureau formed from the membership of its executive committee. Theoretically the Russian Communist Party is only a section of the Third International and, as such, from a legalistic view, subject to its orders, but in reality the Third International is dominated and controlled by the Russian Communist Party, and its whole machinery is in their hands.

The very structure of Soviet power is international in its class character. The State emblem consists of a sickle and a hammer mounted on a terrestrial globe, on which both hemispheres are visible. Its motto is: "Proletarians of all countries, united!" Here in the solemn document that marks the beginning of a new state we find a declaration of international purpose, through world revolution,

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A Digest of Sedition Laws in Principal Foreign Countries

Canada—The Criminal Code of Canada contains a provision, enacted in 1919, which provides that any association, organization, society or corporation, whose professed purposes or one of whose purposes is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property, or threats of such injury in order to accomplish such change, or for any other purpose, or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend, shall be an unlawful association.

Any property, real or personal, belonging or suspected to belong to an unlawful association, or held or suspected to be held by any person for or on behalf thereof may, without warrant, be seized or taken possession of by any person thereunto authorized by the Commissioner of the Royal Canadian Mounted Police, and may thereupon be forfeited to His Majesty.

Any person who acts or professes to act as an officer of any such unlawful association, and who shall sell, speak, write or publish anything as the representative or professed representative of any such unlawful association, or become and continue to be a member thereof, or wear, carry or cause to be displayed upon or about, person or elsewhere, any badge, insignia, emblem, banner, motto, pennant, card, button or other device whatsoever, indicating or intended to show or suggest that he is a member of or in anywise associated with any such unlawful association, or who shall contribute anything as dues or otherwise, to it or to anyone having it, or who shall solicit subscriptions or contributions for it, shall be guilty of an offense and liable to imprisonment for not more than twenty years.

Czechoslovakia—Under the law covering protection of the Republic, Czechoslovakia in 1923 established a code of political crimes, containing also, some general provisions to be applied to political crimes uniformly, instead of the provisions of the regular criminal codes and criminal procedure. They are triable before a special court.

France—Under the French law seditious acts are referred to as attempts or plots against the internal security of the State.

An attempt, the aim of which is to destroy or change the order of government, or the order of succession to the throne, or to excite citizens or inhabitants to arm themselves against (imperial) authority is punished by confinement in a fortification.

To change the order of the government is interpreted to mean to change the form of the government, to sup-

press a function or restrain the constitutional rights of the government.

The law of July 29, 1881, concerning the liberty of the press, does not prohibit attacks directed against the principle or form of the government.

The interpretation of the phrase "(imperial) authority" is construed as the authority or legal exercise of functions belonging to the chief executive, and the phrase "succession to the throne" as succession of republican government.

The criminal code considers as plots and attempts against the internal security of the State, acts such as speeches in public places, placards, or writings which directly incite citizens or inhabitants to commit such attempts or to engage in such plots.

The punishment is the same as in the former case.

The law on the freedom of the press provides that the author of any writing which directly provokes an act against the State—the act actually following the provocation—is punishable as an accomplice by 3 months in prison and a fine of from 100 to 3,000 francs.

Attempts which tend to incite civil war, the illegal employment of an armed force or pillage and public devastation are punishable by death. A distinction is drawn between an armed and an unarmed assembly.

A plot in this case is an agreement actually made by two or more persons. The law reads:

"The crime exists at that instant, and whatever may be its consequences, it is in the eyes of the law, a violation of the law."

The law further states that, "It is not simply the plot which violates the code, the legislature *** punishes the simple suggestion to form a plot. This suggestion constitutes, in itself alone, a crime, *sui generis*."

Germany—The German Criminal Code provides that whoever undertakes to change the Constitution of the Reich with force or threat of force is punishable by death.

Whoever undertakes to deprive the President or Chancellor or other members of the Government of powers secured by the Constitution, by threatening force or shall undertake to prevent their exercising their Constitutional authority is punishable by death or life imprisonment or by imprisonment for not less than 5 years.

Whoever plots or makes an agreement with another person for a treasonable undertaking is punishable as above.

Whoever publicly incites to any of the above mentioned offenses shall be punished by imprisonment for 10 years. If the preparation of this action is done by an organization by continued action or is directed to incapacitate the army, navy or the police or to influence the masses the punishment is death. The offense covers the circulation of printed matter, the use of the radio, etc.

Great Britain—The British Incitement to Disaffection Act of November 16, 1934, amends the law "for the prevention and punishment of endeavours to seduce members of the King's forces from their duty or allegiance."

Under the amended law possession of a document of such a nature that the dissemination of copies would be calculated to have that effect is made punishable, provided there is intent to commit, or aid, counsel, or procure the commission of an offense under the Act.

A Judge of the High Court may grant a search warrant if satisfied, by information on oath, that there is reasonable ground for suspecting that an offense has been committed.

A warrant will authorize police officers to enter premises if necessary by force, and seize anything found there which is suspected to be evidence of the commission of an offense.

Power to issue warrant can be exercised only in respect of offenses suspected to have been committed not more than three months before the laying of information.

No prosecution can take place in England under the Act without the consent of the Director of Public Prosecutions.

The penalty on conviction and indictment is imprisonment up to two years or a fine not exceeding 200 pounds. On summary conviction the penalty is imprisonment up to four months or a fine not exceeding 20 pounds.

Italy—The Criminal Code of Italy in force July 1, 1931, provides that an Italian who, directly or indirectly receives or obtains from a foreigner a promise for himself or others money with the object of performing acts contrary to the material interests shall be punished with penal servitude from 3 to 10 years and a fine of from 5,000 to 20,000 lire.

Whoever instigates soldiers to disobey the laws or violate the oath taken on the duties of military discipline or other duties inherent in their status, or defends before soldiers acts contrary to the laws, oath, discipline or other military duties, shall be punished, for that alone, if the act does not constitute a more serious crime, with penal servitude from 1 to 3 years.

The penalty shall be penal servitude from 2 to 5 years if the act is committed publicly. The penalties shall be increased if this act is committed in war-time.

For the purpose of the penal law, the offense shall be considered to have occurred publicly when the act is committed —

(1) By means of the press, or by other means of propaganda; (2) in a public place or a place open to the public and in the presence of more than one person; (3) at a meeting which, owing to the locality in which it is held, or the number of persons present, or its purpose or object, has the character of a meeting which is not private.

Whoever promotes, constitutes, organizes or directs associations whose object is to establish by violence the dictatorship of one class over another or to suppress by violence one social class or in any manner to subvert by violence the economic or social orders established in the State, or promotes, constitutes, organizes or directs associations having for their object the violent suppression of every political and juridical order of society shall be punished with penal servitude from 5 to 12 years. *Whoever* participates in such associations shall be punished with penal service from 1 to 5 years.

Whoever, apart from the cases contemplated in the

preceding article, in the territory of the State promotes, constitutes, organizes or directs associations which propose to pursue, or which pursue, activities directed to destroy or depress national sentiment, shall be punished with penal servitude from 6 months to 2 years.

Whoever conducts propaganda in favor of the violent installation of the dictatorship of one class over others, or of the violent suppression of one social class, or in any other manner, in favor of the violent subversion of the economic or social orders established in the State, or conducts propaganda in favor of the destruction of every political and juridical order of society shall be punished with penal servitude from 1 to 5 years. If the propaganda is designed to destroy or depress national sentiment, the penalty shall be penal servitude from 6 months to 2 years. Any person who defends the acts contemplated in the foregoing shall be liable to the same punishments.

Whoever, without the authorization of the government, promotes, constitutes, organizes or directs associations, bodies or institutions having an international character or sections thereof, shall be punished with penal servitude up to 6 months or with a fine from 5,000 to 20,000 lire. If the authorization is obtained as a result of false or reticent declarations, the penalty shall be imprisonment from 1 to 5 years and a fine of not less than 10,000 lire.

Poland—The Polish Criminal Code, established in 1932, pays special attention to crimes against the state. The definitions of political crimes are broad and the punishments severe. The Code provides that "he who endeavors to deprive the Polish State of its independence or detach a part of its territory is punishable by imprisonment for at least 10 years or for life or by capital punishment. He who endeavors to change by violence the organization of the Polish State is punishable by imprisonment for at least 10 years or for life." Under the Polish code an "instigator" is he who induces another to commit a crime.

Russia—Under the Criminal Code of Soviet Russia, the crime or counter revolution is defined as any act directed to overthrow, to discredit or to weaken the power of the workers' and peasants' governments of the Soviet Union; of the Federal and State governments, elected in accordance with the Federal and State Constitutions; or to weaken the external safety of the Soviet Union or the basic economic, political and racial conquests of the proletarian revolution.

This general definition may be applied to any act that is not specifically covered by other provisions of the Criminal Code.

Russian law does not use the terms "death penalty" or "capital punishment." The official term for legal execution is "The supreme measure of Social protection."

Among the specific provisions of the Code are the following:

Anyone rendering assistance in any manner to that part of the national bourgeoisie not recognizing the equal right of the Communist system to take the place of the Capitalist system; endeavoring to overthrow the Communist system, or rendering assistance to social groups or organizations that are under this bourgeois influence or are organized by the bourgeoisie, or in carrying out any inimical activity to the Soviet Union is liable to punishment.

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A Digest of State Laws on Sedition, Anarchy and Disloyalty

Alabama (1928)—Advocacy by speech, writing or print, distribution of literature, organization of a society, participating in an assembly, or knowingly permitting by an owner of the use of his property for the advocacy of the forcible or violent overthrow of the Government declared unlawful. Penalty, imprisonment for 10 years or a fine of \$5,000 or both.

Arkansas (1919)—Advocacy by speech, writing, etc., with interest to encourage, advise, assist or abet in the infliction of personal injury upon any person or destruction or injury to public or private property or in anywise to utter or disseminate knowledge or propaganda which tends to destroy or overthrow the present form of government of Arkansas or the United States declared a misdemeanor. Penalty, imprisonment not exceeding 6 months and fine of not less than \$10 nor more than \$1,000 or both, in discretion of court.

Also (Law of 1873)—If two or more persons conspire, by force or otherwise, to usurp or overthrow the Government or obstruct the administration of justice they are guilty, if convicted, of seditious conspiracy. Penalty, 1 to 15 years imprisonment, in discretion of court.

Colorado (1921)—Advocacy by speech, writing, exhibition or circularizing, conspiring, forming an association or otherwise, destruction or overthrow by violence of constituted government of Colorado or the United States declared a felony. Penalty, imprisonment not exceeding 20 years or fine not exceeding \$10,000 or both; any corporation, etc., guilty under the act is liable to a fine of \$10,000 and, in addition, its officers shall be imprisoned for a term not exceeding 20 years or be fined not exceeding \$10,000 or both. Any person causing the death of another person in violation of this act is deemed guilty of murder in the first degree.

Connecticut (1919)—Any person who shall speak, write or print disloyal, scurrilous or abusive matter concerning the form of Government of the United States, its military forces, flag or uniform or which creates or fosters opposition to organized government, shall be imprisoned for not more than 5 years or fined not exceeding \$500 or both.

Florida (1927)—Persuading a citizen not to enlist when United States is at war or when war is pending declared unlawful and punishable as a misdemeanor. Act does not apply to relatives of person solicited.

Also (1927)—If two or more persons combine by force to usurp or overthrow the government of Florida or interfere forcibly with any department of the government the offending persons shall be punished by imprisonment for not more than 10 years.

Also (1927)—Advocacy of insurrection or sedition amongst any portion or class of the population of Florida by speech, or writing punishable by imprisonment for not exceeding 20 years.

Georgia (1926)—Insurrection consists in any combined resistance or attempts at resistance to the lawful authority of Georgia when it is manifested or intended to be manifested by violence. Penalty, death, or if jury recommend mercy, imprisonment for not less than 5 nor more than 20 years.

Illinois (1919)—To advocate by word of mouth or writing, by publication, issue, sale, etc., of literature, organization or membership in an association, presence at assemblies, permitting use of property, the reformation or overthrow by violence or other unlawful means the representative form of government as secured by the Constitution of the United States declared

unlawful. Penalty, imprisonment of not less than 6 months nor more than 1 year or fine of not less than \$500 nor more than \$1,000 or both.

Indiana (1921)—Any person who has been convicted of any conspiracy to defraud the Government of the United States or of any seditious utterances in violation of the laws of the United States is disqualified from holding public office, elective or appointive, in Indiana.

Iowa (1917)—Advocacy of sedition by speaking or writing declared unlawful. Penalty, imprisonment not exceeding 20 years and fine of not less than \$1,000 nor more than \$10,000. Advocacy by any means including the forming of an organization of destruction of Iowa or United States Government declared a misdemeanor. Penalty, imprisonment for not less than 6 months nor more than 1 year and a fine of not less than \$300 nor more than \$1,000.

Kentucky (1920)—Advocacy by word, act, deed or writing of public disorder or resistance to government of Kentucky or its laws or constitution or of the Constitution or the laws of the United States by force or violence or other unlawful means, declared sedition. Penalties, confinement at hard labor for not more than 21 years or by a fine of not more than \$10,000 or both; forcible rebellion, printing literature, conspiracy, advising, counseling, advocating or teaching sedition; permitting premises to be used for seditious teaching, imprisonment for 1 year or a fine of \$500 or both; renting of premises for printing of seditious material, imprisonment for not more than 1 year or a fine of not more than \$1,000 or both. Homicide following violation of sedition act punishable by death or life imprisonment.

Louisiana (1920)—Inciting insurrection or sedition by speaking or writing, unlawful. Penalty, imprisonment not exceeding 20 years and a fine of not less than \$1,000 nor more than \$10,000 at discretion of court.

Advocating destruction of or attempting to encourage opposition or hostility to the government of Louisiana prohibited. Penalty, imprisonment for not less than 6 months nor more than 1 year or fine of not less than \$300 nor more than \$1,000, or both in discretion of court.

Membership in societies to encourage hostility to the government of Louisiana or the United States, forbidden. Penalty, imprisonment for not less than 6 months nor more than 1 year or a fine of not less than \$300 or both at discretion of court.

Also (1918)—Disloyal language. Any person who, when the United States is at war, uses abusive language or writing against the entry of the United States into war, or concerning the army, navy or marine corps, or their officers or concerning the United States flag or who mutilates the United States flag or who displays the flag of a nation with which the United States is at war is unlawful. Penalty, imprisonment with or without hard labor for not exceeding 5 years or a fine of not less than \$500 nor more than \$1,000.

Also (1917)—Interference with enlistments. The discouraging of any person from giving assistance to the United States in time of war or interfering with or discouraging of enlistments is unlawful. Penalty, imprisonment for not less than 3 months nor more than 1 year and a fine of not less than \$100 nor more than \$500, or both.

Maryland (1862)—Providing money or goods to be used in levying war against the State of Maryland unlawful. Penalty, if money, imprisonment for not more than 6 months or a fine of \$500; if property consists of munitions of war, imprisonment for not less than 6 months nor more than 2 years, a fine of not less than \$100 nor more than \$500 and forfeiture of goods.

Meeting to promote secession from United States unlawful. Penalty, imprisonment for not less than 2 nor more than 6 years or a fine of not more than \$5,000. Conspiracy to levy war against Maryland or to give aid and comfort to the enemy unlawful.

Continued on page 254

Should Congress Enact a Federal Sedition Law?

PRO

Affirmative

CAREFUL consideration has been given to the bill (H. R. 5845) to make better provision for the government of the military and naval forces of the United States by the suppression of attempts to incite the members thereof to disobedience.

The War Department heartily concurs in the aim of the bill submitted for report. Such an act would have the effect of protecting members of the armed forces from insidious propaganda, oral and printed, urging disloyal and disobedient conduct among them. Its provisions constitute a reasonable and proper restriction which may be placed by Congress upon the freedom of contact of civilians with members of the Government's armed forces.

A law of this nature does not violate the constitutional guaranties of freedom of the press, for that guaranty does not extend to protection of him who counsels and encourages the violation of the law as it exists. Nor, for the same reasons, does it appear that the guaranty of freedom of speech would be violated.

For the above-stated reasons the War Department favors the passage of the bill.—*Extracts, see 1, p. 256.*

by Hon. Homer Cummings
United States Attorney General

★ *In the opinion of the Attorney General existing law is insufficient to punish subversion tactics against the Army and Navy.*

At various times during the past few months literature of a subversive nature has been circulated among members of the naval service, principally on the West Coast, in two publications entitled "Young Workers" (West Coast supplement) and "Shipmates' Voice." While I quite agree * * * that the purpose and intent behind these publications is to create dissatisfaction by exaggerated and false statements relative to conditions with respect to the enlisted personnel of the Navy, it is doubtful whether such activities go so far as to bring them within the purview of either section 4 of the criminal code, which has to do with the inciting of rebellion or insurrection, or section 6 of the same, which deals with seditious conspiracy.

It is to be noted that the so-called "forcible resistance clause" in section 4 has to do with resistance against the

by
Hon. George H. Dern
United State Secretary
of War

authority of the United States or the laws thereof and not only does "force" appear to be the essence of the offense, but there must be something more than mere advocacy of its use before the statute could be invoked; and there would have to be an act of opposition upon the part of a person, or a number of persons, to the execution of the laws

of the United States or against its authority before we would have a condition of affairs of so formidable a character as to bring it within the purview of the statute.

With respect to the possible violation of section 6 (seditious conspiracy) it is to be observed that the prima facie or surface meaning of this statute condemns "force" only when a conspiracy exists to use it against some person who has authority to execute and who is immediately engaged in executing a law of the United States, and it has been so held. It is also to be observed that in order to maintain a successful prosecution even when the essential element of force is present, a conspiracy must be alleged and proved.

As the Supreme Court has said in the case of *Baldwin v. Franks* (120 U. S. 678), which is a leading case:

"* * * Section 6 means something more than setting the laws themselves at defiance. * * * To constitute an offense under the first clause, that is 'conspiracy to overthrow, put down or destroy by force the Government of the United States' the authority of the Government must be opposed; that is to say, force must be brought to resist some positive assertion of authority by the Government. A mere violation of law is not enough: there must be an attempt to prevent the actual exercise of the authority. That is not pretended in this case. The force was exerted in opposition to a class of persons who had the right to look to the Government for protection against such wrongs, not in opposition to the Government while actually engaged in an attempt to afford that protection.

"So, too, as to the second clause, the offense consists in preventing, hindering, or delaying the Government of the United States in the execution of its laws. This, as well as the other, means something more than setting the laws themselves at defiance. There must be a forcible resistance of the authority of the United States while endeavoring to carry the laws into execution. * * *"

In the case of *Wells v. United States* (257 Fed. 605, 620) the Court stated on page 611:

"* * * the word 'force' has a well-defined meaning * * *"

Further, on page 612, it said:

Pro continued on page 238

Should Congress Enact a Federal Sedition Law?

Negative

★ *Representative
Maverick calls the McCormack bill un-
constitutional, tryannical and wholly
unnecessary.*

THIS bill is un-American—modeled on Fascist and Communistic lines—is undoubtedly unconstitutional, violates primarily the right of freedom of press and, indirectly, practically all the liberties of American citizens; directly, the right to be free of searches and seizures. The reason why this country has been considered a free country is that it has not hitherto enacted oppressive statutes similar to those of Soviet Russia and Fascist Italy and Nazi Germany. Just such laws as this "Disaffection" bill are in effect in those countries today, and are a necessary adjunct to the regimentation of a free people to the purposes of an absolute government.

Always, in presenting a bill like this, the proponents say that it is to control the communists, or "radicals." Twenty-eight thousand communists to wreck 128 million free people! To think that the communists in this country can overthrow the Government is sheer nonsense. This Government is the strongest Government in the world, because it rests on the free consent of the governed. And we offer such a bill as this! Such a projected law as this "Disaffection" bill, besides creating the absurd impression that this Government is worried by the activities of Communistic or Fascistic agitators, is itself an expression of that type of government authority which the framers of this bill consider detrimental to and subversive of the principles of American democracy.

We deny that our Army and Navy are mutinous, or can be made mutinous or disloyal by "foreign propaganda" or "radical"—or what not propaganda. Our soldiers and sailors are loyal. They are good Americans. They are as good Americans as their officers—and as their Congressmen.

The second section of this bill is a pure case of unwarranted, unconstitutional and bigoted tyranny. It provides for every conceivable violation of the rights of search and seizure. It provides for the breaking into the homes of the American people and shows a reckless disregard of every American principle of liberty.

The law is likewise obviously unnecessary.

In the first place the control by the Court Martial Manual of the military and naval forces is absolute and almost unlimited. The Manual and strictly military law have always been sufficient to maintain good discipline and besides there being no danger of mutiny or sedition in our military or naval forces, existing laws adequately

by

Hon. Maury Maverick,
U. S. Representative, Texas,
Democrat

punish disaffection, mutiny or disobedience in the Army and Navy or conspiracies among civilians to incite disobedience.

If the laws already in effect are utilized and are adequately enforced, it is inconceivable how any attempts on the loyalty of the Army and Navy can go unpunished.

It is difficult to find exactly why this bill is being proposed; there are probably a variety of reasons. But the proponents claim the bill is aimed at the alleged Communist propaganda carried on among the soldiers and sailors. Yet high military officials testified before the McCormack Committee that this propaganda was insignificant.

Maj. Gen. Amos Fries, who gave as a reason, before the subcommittee, that this bill was required in order to prevent people from criticising the size of appropriations for the Army or Navy. In other words, his intention and the intention of the bill, among other things, is to put people in the penitentiary if they state that the appropriations for the Army and Navy are too much; the same to apply to newspapers and periodicals. Of course, the bill is so drawn as to fine and imprison anyone criticising the military or naval forces in any way whatsoever, however vague.

While a Senate Committee has been investigating the munitions racketeers, this bill to punish those who criticise their depredations is seriously put forward. It would be ridiculous if it were not so clearly evidence of their power over legislation of this type.

In time of war, such an espionage statute probably has its justifications. However, it is inevitably abused; men are improperly convicted, who cannot afford to appeal, and are improperly jailed. In war-time such abuses, however deplorable, must perhaps be accepted as part of the unavoidable cost of war.

But in time of peace, it is unthinkable that such injustice should be invited. And such a law will invite abuses—unwarranted when the nation is not at war. Even assuming that such a law would be constitutional in time of war, the misadministration of the law—the unfair application of its provisions to innocent persons who cannot afford to hire able lawyers to defend and appeal their cases—which would surely follow its enactment, will unquestionably be unconstitutional. Certain elements are asking Congress to pass a law which is absolutely certain to be used unconstitutionally. And yet, they are the very persons who prattle the loudest on every possible occasion of preserving the Constitution and of the abuses of con-

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Cummings, *Cont'd*

" * * * Let us emphasize, before proceeding, that force is an essential element of the offense, and likewise in the charge, and that mere solicitation or entreaty, without a purpose of applying or using force to accomplish the ends sought to be attained, is without the intent of section 6 of the Penal Code, under which the indictment is drawn."

In my judgment, therefore, it is extremely doubtful whether the activities complained of fall within the purview of either of the statutes discussed, and whether a successful prosecution could be maintained against the person or persons responsible for the circulation of this and similar types of propaganda.

It has also been suggested that a prosecution for a conspiracy to violate certain articles for the Government of the Navy might lie. I think, however, it is doubtful that such a theory would meet with the approval of the courts, bearing in mind the strict construction of criminal statutes, and would be most difficult to prove in this instance.

I desire to invite attention to S. 2253, a bill "to make better provision for the Government of the military and naval forces of the United States by the suppression of attempts to incite the members thereof to disobedience," now pending before the Senate Committee on Naval Affairs. The enactment of this bill would enable a prosecution to be instituted on the basis of the facts pointed out.—*Extracts, see 1, p. 256.*

by Hon. Claude A. Swanson

United States Secretary of the Navy

THE Navy Department is heartily in accord with the purpose of this bill. Literature of a nature subversive to the Government has been distributed in increasing quantities in recent years, to the personnel of the Navy. The literature, apparently emanating from Communist organizations, seeks to undermine the morale of the Navy by urging disloyalty and disobedience of laws and regulations for the government of the Navy.

Existing law is inadequate to curb this propaganda. The pamphlets and leaflets are carefully worded to avoid the insurrection and sedition provisions of the Criminal Code (U. S. C., title 18, secs. 4 and 6), and the publishers likewise escape the penalties of sections 344 and 345 of title 18, United States Code, by avoiding use of the mails.

The bill (H. R. 5845), it is believed, will protect the armed forces of the United States from the contaminating influences of propaganda which has as its ultimate object the overthrow of our Government by force. The proposed legislation does not infringe upon the rights of free speech or of a free press. It does not prevent

any person from advocating a change in existing laws by lawful means. It does, however, prevent persons from urging members of the armed forces to violate the laws and regulations by which they are governed.

The Navy Department recommends the enactment of the bill.—*Extracts, see 1, p. 256.*

by Hon. John W. McCormack

U. S. Representative, Massachusetts, Democrat

★ Representative McCormack argues that Communist activities are being carried on in violation of Constitutional guaranties and should be prohibited by special legislation.

THE last Congress appointed a special investigating committee to investigate Nazi and other un-American activities in the United States, and for several months that committee, of which I was chairman, made investigations and recently made its report.

This bill is aimed at some of the methods found to be employed by the communistic movement in this country to obtain their avowed objectives, by the use of force and violence if necessary, to bring about the overthrow of our Government.

Communism per se is un-American and an alien organization. It is an international movement. That fact is indisputably established. Both from documentary evidence submitted to the committee and from the frank admission of Communist leaders Browder and Ford, at the New York hearing, July 12, 1934, their objectives include—

1. The overthrow by force and violence of the republican form of government guaranteed by article IV, section 4, of the Federal Constitution.
2. The substitution of a soviet form of government based on class domination to be achieved by the abolition of elected representatives both to the legislative and executive branches, as provided by article I, by the several sections of article II of the same Constitution, and by the fourteenth amendment.
3. The confiscation of private property by governmental decree, without the due process of law and compensation guaranteed by the fifth amendment.
4. Restriction of the rights of religious freedom, of speech, and of the press as guaranteed by the first amendment.

These specific purposes of Communist admission are to be achieved not by peaceful exercise of the ballot under constitutional right but by revolutionary upheavals, by fomenting class hatred, by incitement to class warfare, and by other illegal, as well as by legal, methods. The tactics and specific stages to be followed for the

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Maverick, Cont'd

stitutional rights by government officials. They are always vocal about the Constitution when their excessive property rights are even slightly threatened by lawful processes. But the constitutional rights of liberty mean nothing to them. Their attitude is that of Hamilton who said: "The people. The people, sir, is a great beast." But even Hamilton was disgusted by the enactment of the only piece of Congressional legislation which remotely resembles this pernicious bill—the deservedly odious Sedition law, which was used by Jefferson's political opponents to institute a reign of terror during which they unconstitutionally jailed political adherents of Jefferson.

Just as in the science of chemistry, where we find the sudden mixture of certain elements may cause an explosion, so also in political science, or in the science of government, it has been found that the use by the Government during economic distress of violent suppressions, the violation of ordinary liberties of its citizens, and impatience, often leads to revolution and governmental breakdown. One of these might be called the American Revolution, itself preceded by military suppressions and having as its beginning the Boston Massacre by the British troops. This military act formed the basis of the American Revolution through the resentment of the civilian population against military suppression.

Liberty and freedom have been general terms somewhat hard to define, but liberty of speech is specific enough to discuss rather accurately. Liberty of speech has never existed in Africa and Oriental countries. The uncivilized races, and Oriental races, with dictatorial governments, have never allowed freedom of speech. Neither Russia in Europe, nor any portion of its empire, ever enjoyed freedom of speech and it must be remembered that much of the psychological background of that country is Oriental. With the Russian Bolshevik revolution, there was no change in that policy and today no semblance of freedom of speech exists in Russia.

Continental Europe has enjoyed in the past few centuries varying degrees of freedom of speech, though never of a very wide latitude. It has, however, enjoyed more of such freedom than the rest of the world, save England. Historically, England has always enjoyed more freedom of speech than Continental Europe and yet, before the American Revolution, it was unfortunately restricted.

When the Declaration of Independence was written it was determined by our forefathers that the surest way to have a free government was to have the widest latitude in the freedom of speech. They really wished to have a free government and practically every one of the leaders of the Revolution and the political leaders that came for one hundred years afterward were opposed to any such limitation, with the possible exception of President John Adams, in whose administration the Alien and Sedition Acts were enacted.

Thomas Jefferson literally despised any such laws as this. It is Jefferson who reminds us that "Eternal vigilance is the price of liberty" and that "the ground of liberty must be gained by inches." One of the greatest of modern political philosophers, John Stuart Mill, has asserted that "the only freedom which deserves the name, is that of pursuing our own good in our own way, so

long as we do not attempt to deprive others of theirs, or impede their efforts to attain it." This measure is one of those coercive, eroding and corroding acts by which liberty is destroyed in the name of patriotism—patriotism which, when thus unfairly used as a subterfuge for tyranny, deserves the comment made by Dr. Johnson that it is "the last refuge of the scoundrel."

A check of several high-ranking Army officers would indicate that the Army is not for this bill. The Navy appears to be divided in its recommendations, and denies emphatically that subversive influences are an important problem in its share of the national defense.

The Navy has had for some time a "Red Squad" and certain of its officers have spent practically all their time running down "communists" and undoubtedly they are a little jittery. However, it should again be noted that the Assistant Secretary of the Navy maintains that there is no communism in the Navy—absolutely no present danger of it—and that any communistic influence is "absolutely infinitesimal."

So-called "patriotic societies"—patrioteers—the traditional front of the munitions lobby, are in good faith for this bill. Certain business groups, moreover, who are frankly interested in having the Government and the States maintain a reliable force of potential strike breakers through the Army and the National Guard have rationalized their desires into a spirit of lofty and disinterested concern for the preservation of our country from "subversive doctrines."

It is the old line-up: the munitioneers, the patrioteers, and the Chamber of Commerce. The self-appointed friends of the Constitution, so far as it protects their excessive property rights, are here proposing to violate the Constitution, so far as it pretends to protect free institutions and human rights of others. Tyranny masquerading as liberty is everywhere on the defensive today, but never more so than in the house of its self-proclaimed friends and blood relatives.

From the practical viewpoint, this suggested law is worse than nonsense. It is a piece of gross stupidity. Being wholly useless, it will immediately appeal to the public imagination as an excuse by the Government for not enacting laws which meet the economic needs of the day. It will stimulate interest in the very ideas which it aims to suppress. The soldier or sailor, for instance, will say: "If they are using all these laws to protect me, there must be something to this radicalism," and instead of preventing disaffection it will cause disaffection. Therefore, from a military viewpoint, it is entirely impractical, and will be hailed with joy and glee by the communists and extreme radicals—those who violently disagree with the Government—because it will give them an opportunity to say they have been denied their rights of organizing or enjoying the usual constitutional liberties of an American citizen, and will give them undue opportunity of declaring our Government one of a military fascist nature. It will, as brought out originally, furnish the weapons for a reactionary revolution, which would be sure to be followed in due course by a radical revolution.

This measure, put forward apparently casually and in

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accomplishment of this end are set forth in circumstantial detail in the official program of the American Communist Party adopted at the convention held at Cleveland on April 2 to 8, 1934.

The "manifesto" and the "resolutions" incite to civil war by requiring one class "to take power" by direct revolutionary process and then assume dictatorship over the country in the manner followed by the Communists in the Union of Soviet Socialist Republics which is frequently mentioned as a guiding example.

In pursuance of the revolutionary way to power, the program instructs members of the party to obtain a foothold in the Army and the Navy and develop "revolutionary mass organizations in the decisive war industries and in the harbors." The trade unions should be undermined and utilized as recruiting grounds for revolutionary workers.

This is not what somebody charges, this is not my personal opinion; it is the testimony, under affirmation, of the leader of the Communist Party in the United States.

The purpose of this legislation is to regulate and prevent that just the same as we make laws punishing an attempt to commit a crime.

No loyal citizen need worry about such legislation as this. I would expect the "Civil Liberties Union," so called, to oppose it—liberals who, in my opinion, are sympathizers with communism. They are operating under the guise of liberalism. I have no sympathy for them. They believe in unbridled speech. They believe it is all right to advocate the overthrow of government, and the Government has no right, short of an overt act, to try to control the situation.

But I wonder if I got outside of their house and urged a mob to burn their house, if they would not run to the police and ask for protection, or if they would wait until someone in that mob actually put the torch to that house, to start the fire or conflagration?

This bill is aimed directly at the Communists. I do not want any deception. We have been coddling that outfit too long, in my opinion.

They do not want to accomplish their objectives through the ballot. If they did, they have a perfect right to do so. If they confined themselves to making an effort to obtain enough people to vote for their activities and to bring about the change they desire, they have a perfect right to do so, and I would be the last one to undertake to infringe upon it. But they do not want to do that. They will inundate labor organizations, they will capitalize discontent, they will do everything possible to create a feeling which has as its objective the bringing about of a general strike, directed toward the Government, so that if that collapse comes, which, of course, I have no doubt cannot come in this country, then they want to step in with this small but powerful organization of theirs, specially trained, and to control and establish what is called "the dictatorship of the proletariat."

They are dangerous. I classify them, so far as our society is concerned, as presently constituted, as enemies of society, or of the American society, as we understand it.

Under the guise of freedom of speech they say, "You have no right to control us." The constitutional guaranty of the freedom of speech, they say, prohibits the Government from passing a law to regulate the use of violence and force, which, of course, is ridiculous.

On the other hand, they overlook another part of the Constitution, which says that the Federal Government shall guarantee to the several States a republican form of government. So, without regard to the freedom of speech, which has reasonable limitations and which limitations are imposed in accordance with existing circumstances, they have that other constitutional provision running against them, that the Federal Government shall guarantee a republican form of government to the several States.

We have to treat this, not from the angle of whether or not there is any imminent danger, but from the angle of an attempt, just the same as our laws make it a crime to attempt to commit robbery. We do not expect that everybody will be a criminal, but we do not know when that criminal mind will assert itself; and in order to protect society we make it a crime for a person to attempt to perform a certain crime. If a man attempts to commit robbery, it is a crime. If a man attempts to commit rape, it is a crime; and if a man attempts to commit arson, it is a crime. And, if an organized minority operating outside of the law attempts to overthrow the Government by violence and force, it should be made a crime.

Now, as to the freedom of speech, I take off my hat to no one in my desire to protect the constitutional rights guaranteed to me and to every other person in America.

On the other hand, I do not recognize that abuse of speech constitutes freedom of speech. We set forth a line of demarcation, a clear distinction, between the proper use of speech and the abuse of speech. Twelve men would be the judge just the same as with any other crime. That is all that we can do, and what more could be done?

What right have we to permit an organized minority to operate outside the law? Let them renounce their determination to overthrow the Government by violence and force, and I will protect their constitutional rights. Let them go along like the Socialist does, operating within the law and trying to inculcate his principles in others, so that when they get control of government, they can bring about these changes. That is the American way of doing it.

Freedom of speech already has limitations. The law of slander is a limitation on the freedom of speech. The law of libel is a limitation on the freedom of speech, and yet who would say that a newspaper should be without limitation? Who would say that a newspaper could call you and me a thief or anything else without being subject to damages or to criminal prosecution as provided by our law in event they are wrong, or even further, if they are not wrong, but if there is no necessity for it and they are only doing it for the purpose of holding us up to public ridicule and contempt?

What about the constitutional guaranty that the

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as inconspicuous a manner as possible, is a direct, unnecessary, and wanton assault on the freedom of the press and of speech, and on our traditional rights of immunity against unreasonable search and seizure. At the very least, it is a sop designed to cater to the prejudices of those so-called patriotic groups who think that the most becoming garb for the Statue of Liberty is a straight-jacket and that American freedom consists of allowing the liberties of the people to be anaesthetized into complete coma. At worst, it is an underhanded attempt to prevent the American people from criticising or organizing to oppose the magnificent grabs of the munitions makers and other selfish special interests.

We do not face a war. We do not face a revolution. There is no danger of mutiny in our armed forces. The American converts to Communism are contemptibly few in number and without any influence whatsoever. This is Fascism pure and simple. There is no need for the enactment of this bill into law and there is every reason for its rejection.—*Extracts, see 1, 256.*

by Hon. Emanuel Celler,

U. S. Representative, New York, Democrat

★ *Representative Celler characterizes the Kramer bill as a "gag" bill and argues that it is more characteristic of Fascism than Americanism.*

THIS bill seeks to destroy free speech. It is the first peace-time sedition bill since 1798. I am unalterably opposed to it.

At first blush the bill seems worthy enough, but after close scrutiny it is readily discernible that it would become an instrument of oppression. It would doubtlessly lay an ax at the foot of the tree of free speech, would subject the great majority of the American people, particularly the workmen, to the absolute domination of the small minority of powerful and vested interests, would be the means of oppression against unpopular minorities, and would be used by employers and reactionary interests against those engaged in union and legitimate strike activities. It would finally be an attempt to sabotage free speech and other inalienable rights.

Under this statute no overt act is necessary. Merely harboring radical opinions might invite punishment. The speaker or the writer would find himself in the toils of the law if his utterances, though innocent, were forceful enough to incite his audience to violence. It is not what he says. It is the effect of what he says that would count. In practice no precise line can be drawn between advocacies of change by violence and by peaceful means. Different people are affected differently. A perfectly fair yet sharp criticism of the Government as a street-corner orator, by a striker, by an editorial writer, might have little or no effect upon many persons, yet cause others

to do violence. That striker, editor, or orator would be clapped into jail.

It is difficult to draw the line between advocacy and incitement. Justice Brandeis, in the *Gitlow* case, very significantly stated:

"Every idea is an incitement. It offers itself or belief, and if believed it is acted upon unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrow sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason."

Pass this bill, and what will be the result? People would be afraid to speak or write their thoughts. They would fear prosecution, or rather persecution. Rather than speak the truth, they would remain silent. Or, if they do speak, they would "pull their punches." In other words, the truth would remain partly spoken or unspoken for fear of jail. Free speech, freedom of the press, freedom of assemblage, would all go aglimmering.

The owner of a plant—wealthy, powerful, ruthless—could use the statute for his own fell, selfish purposes. Where he controls local officials he could claim that strikers at his plant were guilty of sedition and were aiming at the overthrow of Government, whereas in reality higher wages and shorter hours were their goal. Subservient and complacent district attorneys, sheriffs would readily prosecute.

Under this act anyone saying anything not in accord with the views of those in power—be they great industrialists, Governors, sheriffs, or political bosses—would come to grief.

It appears to be undisputed that communism implies the ultimate use of force if it is unable to achieve its ends by means of the ballot. It would seem to follow that this bill would punish anyone who should advocate communism, whether or not he specifically advocated the use of force. The proponents deny that this is the intent of the bill, but it would seem to be its necessary effect.

I am for punishment of those who commit overt, specific illegal acts; punishment for those who are guilty of active treason, criminal anarchy, riot, insurrection, assault and battery, criminal conspiracy, incendiarism. But under this statute mere words would be illegal; wild, forceful, emotional utterances; reprehensible, absurd, untruthful statements could enmesh a person.

It must be borne in mind that the present law adequately protects against any activity against the authority of the Federal Government. For example, our conspiracy statutes, sections 6 and 37 of the Criminal Code (U. S. C., title 18, secs. 6, 88), severely punish two or more persons who conspire to overthrow the Government or to commit any offense against it. It will be appreciated that in order to have "two or more persons" conspiring it is only necessary to have one talker and one listener. The Kramer bill and all other bills of the same ilk are therefore unnecessary as well as undesirable.

Experience with all criminal syndicalism and criminal anarchy laws conclusively shows that most of the prosecutions have been based on utterances or writings pro-

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Federal Government shall guarantee to the several States a republican form of government? Suppose that the freedom of speech interferes with that other guaranty? What would be the duty of Congress? We have a bounden obligation to protect the several States in their republican form of government. Here is an organized minority, claiming that they have the right to operate under the guise of the freedom of speech, their objective being to destroy that freedom if they are ever successful in accomplishing their objective. What a ridiculous proposition, to say that government has no right to protect itself against such assaults, permitted to operate under the guise of freedom of speech, when they have as their objective its destruction, and not only the destruction of that, but all of the other human rights guaranteed to us by the Constitution.

I stand for the protection of our press and for free speech. There has never been any action on my part which has been inconsistent with that, but there is a line of demarcation.

I take a great deal of pride in my right of religious freedom and religious conscience. I take a great deal of pride in the right of everybody else in that respect, but these people are out to destroy that by force and violence. They do not want to go ahead within the law to try to obtain their objective. They are not satisfied to proceed in the constitutional and lawful way. They are trying to use any and all means, legal and illegal, or both, to try to obtain their objective. I do not recognize the right of any group, and I do not care where they are communists, nazis, fascists, or anybody else with any other name, to advocate the obtaining of their objectives by the overthrow of the Government by violence and by force.

I understand that the British Parliament has considered this question recently because the circumstances required it. When the agitators get beyond the stage of harmlessness, legislation must be enacted, and should be. I know there was pending recently in the Parliament a very drastic law. This is mild in comparison. Up in Canada they prohibit the Communist Party. What they did in Canada was that they took one of the mounted police and said, "you take off the red uniform and put on the red tie", and he started in at the bottom of the ladder, and for 7 years he was a Communist, and he went from the bottom right up to the top and got the evidence, and when they had a complete case, they acted and passed a law outlawing the Communist Party in Canada.

This bill does not go that far but there is one thing that any real American can demand and that is that the Communist Party disavow their advocacy of the overthrow of the Government by violence and force.

Again I say what right have we as law-abiding citizens to stand here and permit any determined violator deliberately and with premeditation to do everything possible to advocate and to employ means to overthrow our Government by violence and force? It is hypocrisy. Anybody who talks about freedom of speech—I cannot see what the connection is or where freedom of speech is involved when the person claims the protection of that

great constitutional guarantee when he is advocating the very overthrow of government.—*Extracts, see 1, 2, p. 256.*

by Hon. Charles Kramer

U. S. Representative, California, Democrat

★ *Representative Kramer cites Communist tactics in California as warranting the passage of a sedition bill.*

FROM the standpoint of America for Americans, from the evidence which has been heard by the committee on un-Americanism there is just cause for the enactment of this bill.

The committee had in mind solely the purpose of protecting the overthrow of this Government, the United States.

There has been presented to me a list of patriotic and fraternal and other organizations which are favorable to the enactment of this law, 124 organizations of high outstanding character, such organizations as the American Legion, the Veterans of Foreign Wars, the Benevolent Order of Elks, etc.

Some of the things that the Communist Party advocates and stands for are contained in a statement presented to the committee by Miss Margaret Kerr of Better America Federation, Los Angeles, California. I quote from it as follows:

"The greatest menace to the Nation today is the new tactics of the Communists among organized labor. Under this new program adopted earlier this year, although tested out last year by them, the Communists are boring within legitimate labor organizations within the Nation. This new movement is known as the 'A. F. L. Rank and File Committee.'

"Strikes are created by these Communist agitators and organizers and a separate set of demands agitated so as to divide the ranks of the unions, strikes by legitimate unions are grabbed on and demands enlarged so as to create dissension and therefore divisions.

"Unemployment caused by such strikes at such times as now 'prevents stabilization' of business and therefore 'capitalism.' It is holding back recovery which the administration is spending billions to prime.

"Industries are harassed by these Red elements who create these strikes and who are breaking down the industrial side of the recovery program, throwing more men out of work and making relief appropriations of no material value. The continuation of such will eventually break down the entire financial structure of our Government; that is the hope of the Reds.

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phesying, not advocating, violence at some future time to effect revolutionary changes in control of the economic system. Many of the prosecutions have been based, not on personal advocacies, but on mere membership in radical organizations held to subscribe to such a doctrine. Prosecutions have therefore not been directed at any actual or threatened violence, but at political or economic opinions of minority parties and labor unions, and have been instituted usually in times of strikes. In effect, these laws have been primarily used to aid employers against workers.

The instant bill and others like it make dominant interests the controllers of freedom of speech and of the press.

Prosecutions have been usually motivated by political and economic prejudice.

They do not protect the Government against counsels of violent action. They do aid employers in conflicts with workers, often on the theory that opposition to capitalism is opposition to the Government.

No definite standard of guilt is fixed.

Apparently, only general doctrines, necessarily remote in effect, are aimed at. Guilt under the Kramer bill and similar statutes is made absurdly dependent upon forms of language or choice of words. The courts are unable to apply any consistent standard of guilt.

Strangely enough, this law would punish the advocacy of force by those who seek to change the existing system, but does not punish the advocacy of force by those who seek to maintain it. In other words, encouragement is given to those who by violence would preserve a political and economic status quo. There is thus set up a sort of Fascist concept of law.

This bill is undoubtedly unconstitutional violating as it does the basic safeguards and rights of the American citizen. In *United States v. Schenck* (249 U. S. 47), the Supreme Court upheld the application of the war-time Espionage Act (act of June 15, 1917), concerning the distribution of leaflets urging drafted men to refuse to serve. It expressly limited, however, the effect of its decision to cases arising during times of emergency. The rule it lays down would clearly make unconstitutional during peace-times any bill even remotely resembling the Kramer bill.

Thomas Henry Buckle, author of that great classic, the *History of Civilization*, significantly states:

"The only answer to words is words; when an attempt is made to answer them by force, it becomes tyranny."

Voltaire put it this way:

"I may disagree utterly with what you say, but I will fight to the death for your right to say it."

There seems to be a general hysteria of fear gripping the Nation against communism, socialism, and all manner and kinds of other "isms." In almost every legislature a flood of "gag" bills and sedition measures have been introduced.

Several sedition bills, including the Kramer bill, before the Judiciary Committee were urged as a means of combating the spread of communism and fascism. They would, I repeat, merely curtail free speech.

In my humble opinion the best antidote to communism or fascism is more—not less—free speech.

But there is no real danger from communism in this country. The total enrollment of the Communist Party is 36,000 votes, 18,000 of which are in New York. However, if there is no danger from the Communists now, there will be danger if these "gag" and sedition bills are passed. That is the meat upon which the Communists feed—repression and restraint. I believe the sound method of dealing with communism is to bring it out in the open so that its tenets, if unsound, may be so demonstrated. The most effective method of defeating the Communists is to throw as much light as possible upon their program, so that its unsoundness may be revealed. The bill before us would have the contrary effect of driving their activities underground, with the inevitable consequence that they would become further intensified and publicized. Forcing Fascists and Communists into secret channels would only martyrize them—make them heroes and their doctrines popular and romantic. Their adherents would, consequently, greatly grow in numbers.

Let us, therefore place communism, with all its hideousness and loathsomeness, in the open market place, where we can place a value upon it. Let us freely speak and write about it and show it to be cheap and worthless, not keep it hidden, like a jewel, in a safe, as though it were valuable and precious. Only by dragging it out will we consign it to the dunghill, where it belongs.

The situation that confronts us today with these repressive bills is not unlike that which confronted Jefferson, Madison, and Livingston upon the eve of the Alien and Sedition Acts of 1798. John Adams and the Federalists then in power were restive under the sharp criticisms of their regime. They felt that they, like the king, "could do no wrong." They wished to prevent criticism and stop the spread of Jeffersonian "radicalism." They passed the Alien and Sedition Acts. This aroused the greatest indignation and caused their decisive defeat at the polls by Jefferson and his followers.

The Alien and Sedition Acts were, of course, repealed, and Congress, many years after the repeal, repaid the fines imposed on some of its prominent victims. I warn—let there be no recurrence of the wild and pitiful scenes resulting from the Sedition Acts of 1798! Let there be no Sedition Act of 1935!

If these "gag" and sedition bills are permitted to become embedded in our permanent statutes, then what apparently is desired in this country is a sort of dead level of mediocrity, a Nation of nincompoops and dullards. If we cannot speak our minds freely and openly on economic and political topics, then we will be reduced to automatons, without intelligence, ideas, or courage! Without freedom to express ideas and thoughts there can be no progress! We might as well go back to horse and buggy days! If the Government is to throttle free thought and free expression, fear and timidity will replace courage and initiative of our citizenry.

There is grave doubt as to the present need for any effort to prevent revolution by any legislative restrictions on speech.

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Kramer, Cont'd

"In the farm districts the Communists agitate farmers to demand higher prices for their produce, and in cities the Reds agitate the people against high food prices.

"In the South and in Harlem, especially, they are making great headway among the Negro population. In their report to Moscow, they lay this success to the 'ignorance of the Negro.'

"There can be no recovery in the United States until the Communist menace is dealt with. Besides creating continued turmoil, strikes, etc., it has gotten to a point where most industrialists are fearful of signing up with legitimate unions for fear these unions will be under control of Communists before the ink is dry on the contracts.

"Another new movement that promises to fool many and thereby serve as a gain for Communists is the newly organized Labor Party, which they are putting on local ballots within various States where the Communist ticket has been barred or has made no material headway as a party.

"Another new movement is the 'American League of Writers', organized recently in New York City where 200 writers met as delegates for the purpose. Over 500 writers have joined, we understand. This is to become the American section of the International of Revolutionary Writers.

"At the national convention of one Communist branch within the Nation, held in New York City last week, the reports show that the organization has a membership of 72,000 in the United States. (It is only one of 670 such national organizations).

"These are some of the high lights of the situation. The longer Congress postpones action against Communists and communism, the more difficult it will be to deal with the menace. Germany and Italy are good examples of what people were driven to when the authorities fail to act against the menace."—*Extracts, see 1, p. 256.*

by Hon. Hamilton Fish, Jr.

U. S. Representative, New York, Republican

★ Representative Fish charges that Communism is a failure in Russia and its advocacy in America should be checked by law.

I BELIEVE in liberalism, which is nothing more than the right of the people to govern themselves, and which was the fundamental political faith of Abraham Lincoln. I not only have faith in the people, but also in our representative and constitutional government, which is the fairest, wisest, most honorable, and best form of government devised by the mind of man. Naturally I loathe and abhor communism and all other

forms of foreign dictatorships that seek to undermine and destroy our free institutions, both from within and from without.

I am no alarmist and do not anticipate a Communist revolution in the United States tomorrow at dawn or the next year or in our generation, if the American people are kept informed of the aims and purposes of the Communists. They are so utterly destructive of our free institutions and our liberties that there is no room whatever for communism in the United States when the facts are known. We are still a free country, and we propose to keep it free from all forms of alien dictatorships of the left or of the right.

What is it that the Communists seek to impose upon the American people? (1) Destruction of all forms of religion and teaching hatred of God; (2) destruction of private property and inheritance; (3) using the Communist International, with headquarters at Moscow, to spread revolutionary propaganda and to incite strikes, riots, sabotage, and industrial unrest in all non-communist nations; (4) to promote the bitterest kind of class hatred; (5) to develop a class or civil war in order to obtain the ultimate objective; (6) a soviet dictatorship under the red flag with a world capital at Moscow.

The Communist Government of Russia is an absolute despotism based upon fear, a huge and bloodthirsty spy system backed by armed force and violence. There is no liberty of speech, or the press, or of assembly. There is nothing but suppression of the rights and liberties of the individual, the control of the people through fear, regimentation, and the bread ticket. The impoverishment, undernourishment, and often starvation of a disarmed and terrorized people is the order of the day.

That is the record of 17 years of communism in Soviet Russia. In 1933, 6,000,000 Russians starved to death in a country that used to be the granary of Europe, but due to strict censorship that facts are only now seeping out; and even now millions of other poverty-stricken and helpless Russians are on the verge of starvation and will be liquidated in the dreadful agony of slow starvation because of the horrible collapse of the communistic experiment.

All any fair-minded man has to do to witness the abject and fearful failure of communism is to cross the border from any of the secessionist States formerly part of Russia into Soviet Russia today. In the secessionist and capitalistic States of Finland, Estonia, and Latvia the peasants' houses are clean and kept in good state of repair, and the people are well-clothed, well-fed, free, and contented. Across the border in communist Russia the houses are dilapidated, badly in need of repair, the people are dirty, poorly clothed, undernourished, miserable, and fear driven. There you have the real contrast between a communist and a capitalist state. Every diplomat I have discussed this issue with, whether representing our State Department or a foreign nation, has confirmed these facts.

We have nothing to do with the form of government in Soviet Russia, but in view of the fact that the Communist International at Moscow and the Communists

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Celler, Cont'd

Russia, Italy, Germany, have always had espionage and sedition laws of the Kramer type. The results are obvious—dictatorships. Communism is one, fascism in the other, and nazi-ism in the third. On the other hand, England has always had its Hyde Park where its turbulent and radical populace can blow off steam. England has no dictatorship.

There is a need for progressive and patriotic men and women everywhere to take heed and be watchful lest these sedition and "gag" bills take hold.

Remember article 3 of the Constitution of the United States says, "Congress shall make no law *** abridging the freedom of speech."—*Extracts, see 4, p. 256.*

by Hon. Vito Marcantonio,
U. S. Representative, New York, Republican

★ *Representative Marcantonio considers the Kramer bill dangerous on the ground that it may be used against striking labor.*

I BELIEVE that this bill is very dangerous and can be used as a weapon to break up strikes in the event of labor dispute. Assume, for instance, as happens very often, that the militia is called out in a labor dispute. Assume further, as often happens, that during a strike the various elements within a union are bound to get out leaflets appealing to the strikers, and that at that particular period the militia has been called out to prevent picketing under the guise of maintaining law and order. If any one of these leaflets asserts the right of the strikers to picket, that leaflet can be used, especially if that leaflet gets into the hands of a soldier or of an officer of that militia which is in charge at that time, as the basis of prosecuting the labor leaders and the labor officers who are conducting that strike.

Of course, it may be argued that this theory might be construed as being a little bit far-fetched, but my experience with labor disputes has been that when a strike becomes very acute, any weapon is seized upon to break up that strike, and this would be one of the most efficient weapons to destroy a strike at any time, and I believe that opinion now is pretty well unanimous that labor has a right to bargain collectively and has a right to enforce that collective bargaining, if necessary, by means of strikes.

Now, if we are going to legislate this bill into law under the guise of protecting the soldiers against literature which might advise them to disobey the rules and regulations, and that alone, when leaflets are distributed they will be used to bring before the district courts of the United States strike leaders and labor officials.

I think that this bill is very, very dangerous, and I am certain that I can very readily prophesy that you will not have many prosecutions under this bill when it comes to

sending the literature to soldiers, but this bill will be used to prosecute labor leaders in labor disputes when the militia is called out when any strike takes place in any locality of the United States.

I also feel this way about this bill: I think that it is absolutely silly and unnecessary. It is silly for this reason, that if an officer, with all of the power that is given to him by military law, cannot maintain discipline and cannot keep his soldiers in line, that officer ought to resign and take a back seat and let somebody else who can handle the men take his position.

Why should we have enacted into law something which is unnecessary, uncalled for? There is no danger of our soldiers revolting. The average soldier is more patriotic than the average laymen; otherwise he would not assume a uniform. There is no need of placing this circle of intellectual steel around him to protect him, and, since it is not necessary, why enact a law which may be used against the workingmen of this nation when they attempt to assert their rights and their prerogatives and everything?

The bill is dangerous, and it is unnecessary.—*Extracts, see 1, p. 256.*

by Dr. Charles Beard,
Noted Historian

★ *Dr. Beard contends that history shows that the safety of democracy lies in free speech and expresses the fear that the passage of the McCormack bill would result in an invasion of civil rights.*

Nor only is the bill unnecessary, but in its broad, loose and sweeping language, it is in my opinion a flagrant invasion of civil rights guaranteed under the Constitution of the United States—freedom of the press, freedom of speech, and freedom of religious worship. It is not now and never has been unconstitutional for an American citizen to believe that war is an evil, to oppose war, to oppose the maintenance of a standing army, to discuss freely the relations of war and its establishments to the development of civilization in the United States. There now exists among us thousands of men and women, clergymen and laymen, who believe that the preachings of Christ forbid the use of violence. They hold that we should love our neighbors as ourselves. Thousands have taken the pledge and made public announcement to the effect that they will not support any war, that they will resist war to the uttermost.

I do not share these views personally, nor am I enough of a theologian to determine whether these people correctly interpret the teachings of Christ, but the point I am making is that under our Constitution and the sanctions of long American practice, the opponents of war are exercising rights which belong to them as American citizens.

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Fish, Cont'd

in the United States, all of whom take their orders from the Moscow International, are spreading revolutionary propaganda here and seeking to impose communism upon us, we have a right and a duty to find out the facts as to how it works in Russia and expose its tragic and horrible failure.

The growth of communism is more rapid and extensive in American colleges than in any other sphere of Communist activity. It is a sad and tragic commentary on American life and our institutions that in edifices of learning the younger generations of Americans should be taught that everything is wrong, rotten, corrupt, and oppressive in free America and everying peaceful, beautiful, humanitarian, and prosperous in Soviet Russia.

There are a number of near Communists and Communist sympathizers in the Federal service at Washington, appointed by the President, and holding important and often key positions. Most of them do not believe in either our industrial or political system, and use every opportunity to undermine them.

Every Communist sympathizer or, more particularly, contributor, drawing a salary from the Federal Government which he or she is seeking to undermine, should be dismissed immediately.

If alien Communists do not like our country, our laws, our ways, or our institutions, all they have to do is to go back home. If, however, they insist on staying and spreading Communist poison and revolutionary propaganda against our institutions and urging the overthrow of our republican form of government by force and violence, then they should be immediately deported and the Congress should enact even stronger laws and see to it that they are enforced and not evaded and nullified by Miss Perkins, a member of President Roosevelt's cabinet.

The recognition of Soviet Russia should be withdrawn, as it was a gigantic hoax perpetrated upon the American people by the President and the "brain trust." Propaganda emanating from the "brain trust" promised American business men and southern cotton growers a billion dollars' worth of trade with Soviet Russia, provided we granted recognition. The northern and eastern industrialists were seduced by the mere dangling of the juicy trade plum before their eyes, as were the members of Congress from cotton States who were promised that the Soviets would buy \$200,000,000 worth of cotton annually. Even the religious element of the South, the Baptists and Methodists, who were opposed to having anything to do with the godless communists, were betrayed by the cotton bait.

The Soviet Government has repudiated its promise and pledges and, according to Mr. William Green, president of the American Federation of Labor, continues to spread revolutionary propaganda in the United States through the Communist International at Moscow, refuses to reimburse American citizens for the property which the Communist State confiscated in Russia, or to settle its debts to the United States, and does less trade with us now than before recognition.

I concur with the McCormack investigating committee report, recommending that Congress make it an unlawful act for any person to advocate changes in a manner that

incites to the overflow or destruction by force and violence of the Government of the United States. This recommendation was one of the major recommendations of our committee 4 years ago.—*Extracts, see 5, p. 256.*

by Major General Amos Fries

United States Army, Retired

★ *General Fries, speaking for the American Coalition of Patriotic Societies, urges legislation to combat what he says is a systematic campaign to break down the Army and Navy.*

I HAVE been studying this question for more than 13 years.

When the Washington Arms Conference met in Washington on November 12, 1921, I was appointed one of the technical advisers, and later was one of two American members of a special committee, a large committee, to consider chemical warfare. There was a great outcry raised especially against chemical warfare about that time in certain papers and magazines, and I started out to find out what was back of it, and that led me through the pacifists, an international radical group, into communism, because I found that they all intertwined, the pacifists' side being the skirmish front for the Communists.

I am making this statement because it has a direct bearing on a great deal that goes on in this matter connecting the services. If by misrepresentation, popular appeal, and acclaim they can break down support for the services, then the services, they feel, will crumble of themselves.

Just to show the indirect way in which they work, they have changed their plans to some extent from time to time. In 1924, in discussing the party movement, they said:

"The majority of the workers in this movement desire the formation of a labor party, but they do not yet demand an independent proletarian class party. They rather prefer to accept the credentials of the opposition party of the petty bourgeoisie. The path of the proletariat can often lead through such false roads in its first step."

Mr. Bruce Rogers, working with the Communists, had this to say, in 1924, about the Army:

"It is easy enough to corrupt the Army. Perhaps I should not use the word 'corrupt,' but what I mean is that it is easy to find men in the service who are against the Government and who are sore because of mistreatment, and who are ready to turn against the Government."

And this is important, as showing their plans 10 or 12 years ahead:

"Keep in mind that you do not have to get the officers. It is not the officer who handles the actual machinery of war. The officer directs, but the private is the man who carries out the orders, the private, subofficer, or noncom-

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Beard, Cont'd

There is another group of American citizens who take the Declaration of Independence seriously and believe that people have a right to alter and abolish any existing government when it becomes destructive of the great objects of government—the preservation of life, liberty, and the pursuit of happiness. A large number of American citizens believe in this document. They teach it, and they have copies of the Declaration of Independence in their possession. It is the basis of our democratic faith.

Now, in broad, vague, and elusive language, this bill penalizes any person who may directly or indirectly advise or counsel disobedience to military and naval regulations. Let us just consider the operation of such a statute. If this is the heart of it, I will not disagree as to the purpose of this bill. We are not in favor of allowing disaffection in the Army and Navy of the United States. We are considering the practical effects of this bill as it will be carried out after it is put on the statute books, reasoning from long experience under such measures, dating back to the alien and sedition acts of 1798.

Consider how this bill will operate. Suppose that a Christian minister, unaware that there are in his congregation members of the armed forces of the United States in civilian clothes, preaches against war and all its works, and suppose that the sermon turns the head of some officer or private and leads him to desert or commit some other act of disobedience. Such cases we have under the sedition act of 1918. Under this bill, this minister could be punished by fine or imprisonment, or both. Not even the mildest opposition to war could escape a possible charge that it counseled disobedience to military authority.

This is not all. As a student of history, and a writer on history, I beg to call your attention particularly to this point. You know that there is in the public and private libraries of the United States, literature of all kinds counseling both revolutionism and extreme pacifism. Librarians engaged in collecting material for the history of civilization are compelled to include representative books, pamphlets and papers, which reveal all types and phases of thought. Like librarians, students of history must all have such materials in their libraries and must make use of them in their studies. Yet under this bill the very possession of such literature is open to penalization.

You see, literature of this counseling and advising character is in circulation. The libraries are collecting it, and they have to collect the materials that bear upon the development of civilization and thought and every other condition of American life.

Now, under this bill, any personal enemy or roaming police officer who hears that a librarian or student possesses such books, papers, and documents may sue out a warrant and invade the library or home of the possessor, search his property, seize incriminating papers, and discredit and ruin him, or involve him in a costly legal proceeding which he may not be able to afford. Such searching and seizing on the part of British authorities was one of the violations of American liberty which brought on the American revolution and led George Washington to leave the British Army and take up the sword against it.

My final objection to this bill rests upon 40 years' study

of American history and government, study of the writings and practices of the men and women who founded the Republic and steered it through troubled years. It rests upon the American conception of the art of government. That conception exemplified in the life and teachings of Justice Holmes, who has just left us, is to the effect that there is more safety for democracy and popular government in the ventilation of opinions than in the police suppression of opinions. Nearly all American history is a commentary on that principle, and I commend to your attention the Constitution of the United States and the writings of Washington, Hamilton, Jefferson, Madison, Webster, Lincoln, and all statesmen who are counted great among us.

It is alleged that there is an alarming growth of revolutionary radicalism in the United States. Apart from the interested alarms of the Hearst press, I see no evidence of it. But if there is, the Congress of the United States has more effective weapons for combating it than is contained in the proposed legislation. Congress can do more to allay popular distempers, if there are such, by calling attention to President Roosevelt's security program and other measures designed to provide employment than by enacting penal legislation conceived in the spirit of historic tyranny. With 20,000,000 people on public relief and more millions on the verge of ruin, we need the exercise of economic intelligence, not an appeal to the mentality of the censor, the drill sergeant, and the Army and Navy lobby in Washington. Military intelligence has its merits and uses for its purposes, but it is not omniscient and under the Constitution of the United States it is subordinated to civilian intelligence. One of the first acts wherever it is exalted to supremacy is to suppress by armed force representative bodies such as the Congress of the United States, or to turn them into assemblies of cringing sycophants. That seems to be the record of history, where military intelligence is exalted above civilian intelligence.

It is not a question of purpose; it is a question of whether the means provided in that broad language in this statute are not an invasion of constitutional rights.—*Extracts, see 1, p. 256.*

by Professor Zechariah Chafee, Jr.

Harvard University Law School

★ Professor Chafee expresses the opinion that not only are the Kramer and McCormack bills wholly unnecessary, since existing laws are adequate, but might be used to suppress free speech.

THE House bill 5845, penalizes persons for endeavoring to stir up disaffection in the armed forces in time of peace. The Espionage Act of 1917, which is still in force, covers such conduct in war time. Never before in the history of the country has it been

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Fries, Cont'd

missioned officer. It is the man who operates the gun that we want to work for us. If the man with the gun is for us, he is not going to fight against us; he is going to fight with us."

On June 22, 1925, there was an article in the *Daily Worker*, which is the official Communist paper of the Young Communist League, as follows:

"The young workers of New York will hold a large mass meeting against militarism in the civilian military training camps on Friday, June 26, at Stevenson Casino. The fight against the citizens' military training camps is the fight of the entire working class. The militant workers must repudiate the action of the American Federation of Labor officials who so grossly betrayed the interests of the worker."

That refers to the American Federation of Labor's endorsement of the citizens' military training camps.

And at the same time, in 1924, appeared the following:

"You workers, you have no interest in fighting in a capitalist army or navy. Fight against the Boys and Girls Scouts. Boycott the citizens' military training camps."

Our organizations are for this bill to the limit. They will back up another bill to cover civilian life, and they believe the defense of our country is the first duty of every citizen, and that no matter what it costs, we must keep that up, and that anything that will help prevent any spirit of disloyalty among the uniform services is worthy of our closest attention and hardest work.—*Extracts, see 1, p. 256.*

by Lieut. Col. Orvel Johnson, U.S.A.

Executive Secretary, Reserve Officers
Training Corps

★ Colonel Johnson says America must follow the lead of other nations and enact legislation to control the spread of Communism.

OUR organization believes that this is one of the most important bills to come before this committee for years. In support of it we desire to say that the United States Government is the only nation of any consequence on the face of the earth which is without adequate law and law-enforcing machinery to control Communists and the spread of communism. This is a most important consideration when we realize that today there are, as near as it is possible to ascertain, as large a per cent of our population following the highly destructive doctrines of Karl Marx as there are in Soviet Russia at this time, where they are under the strictest control and discipline of any people in modern times.

The true extent of the menace of communism in America can be understood only by the realization that through our complete lack of governmental control of communism,

which amounts to licensing of this institution of terror and treason, it has been able to openly perfect its organization, train its followers, finance its multitudinous activities, and facilitate its propagandizing of our entire citizenship, not only openly, but in a greater variety of ways than in any other nation. Is it a wonder communism has made greater progress in this than any other country during the last decade? Under such advantageous conditions may we not reasonably expect an infinitely greater growth in this Godless monster in the coming few years, if the Congress of the United States fails to give us and this constitutional government proper and immediate protection by law.

The fact has been published officially and otherwise so many times in this country during the last few years that it is common knowledge that the Communist Party of America is a branch of and controlled directly by the Third Communist Internationale of Russia. The Communist Party of the United States has divided the country into 26 districts and 187 subdistricts in well over 500 cities. These subdistricts are again divided into units, which in turn are divided into sections or cells. The more numerous branches of the party run into thousands, and are located in practically every city and hamlet in the country, though this may not be generally known as yet. We can verify the fact that there are over 600 national Communist organizations and movements in the country. Of this huge number 22 of these groups are directly under Russian control, while another 24 are under American management. These 600 organizations are operating among both the employed and unemployed; many of them are groups under such designations as "Cultural," "Youth," "Defensive," "Legal," "Atheist," "Ex-Service Men's League," and so forth.

The Communist Party causes to be published and distributed in America fully 60 foreign-language and about 300 English-language magazines, many of which have large circulation. All of these publications carry on "anti-government" and "anti-capitalistic" fights, in furtherance of their revolutionary plans by which they seek to overthrow the Government of the United States.

The R. O. T. C. Association of the United States is interested in the advance of communism in America because it imperils the safety of our citizens, and the existence of our Government through sabotage in the ranks of the services. One Communist can easily destroy a battleship, transport, troop train, an airplane or barracks. A munitions plant could be blown up as easily. These things are not, however, more important than the morale of the personnel of the Army and Navy and their respective reserve forces.

As this committee very well knows, the principal source of officer material for the services in a national emergency is from the R. O. T. C. students in our schools and colleges which constitute the most vulnerable point of attack upon our defense forces of the future. Many Communist organizations are devoted entirely, or practically so, to work among the students of our educational institutions all of which have been brought into existence for that very purpose by the Communist Party of America. There are about 30 of this class of organizations among which

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thought necessary to have such legislation during peace. No serious movement toward disaffection in the Army is covered unless two or more persons are concerned in it, and the present statutes give the Government ample power to deal with such situation in time of peace. Title 18 of the U. S. Code has two sections for this purpose. Section 6 punishes with 6 years in prison or a fine of \$5,000, or both, two or more persons who "conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States." Section 88 of the same title, which is also section 37 of the Criminal Code, punishes with severity any conspiracy "to commit any offense against the United States." Since the obedience of soldiers is required by law and any mutiny is an offense against the United States, a conspiracy to cause a mutiny would be punishable under these two sections. Section 6 was enacted during the Civil War and was thought adequate to meet the conditions of the reconstruction period in the South. They are equally adequate to take care of any dangers today. Also, State laws apply to talkers and writers who are advocating the overthrow of the Government or creating serious dangers of breaches of peace.

The proposed bill is not only unnecessary but is likely to be used in times of excitement to suppress discussion among civilians. Its terms do not, of course, indicate such a result, but the words of such a statute come in practice to mean much more than is apparent when they are first read. The Espionage Act of June 15, 1917, looked as if it was limited to persons who were talking to soldiers for the express purpose of influencing mutiny or insubordination in the armed forces, and yet the judicial interpretation of this statute went much further. Only a few persons were convicted for actually urging them to evade the draft or not to enlist. I recall no case in which anybody was convicted for expressly urging men who had become soldiers to mutiny or disobey orders. Almost all the convictions were for expressions of opinion about the merits and conduct of the war. It was in no way necessary that these expressions of opinion should be addressed to soldiers or to men on the point of enlisting or being drafted. Most judges held it enough if the words might conceivably reach such men. Articles in newspapers of general circulation and even a letter to the editor of such a newspaper fell within the statute because the newspapers would be read in some training camp where the statements might cause disaffection. Addresses to large audiences were punishable because a few men in uniform were liable to be present. The practical effect was to suppress a large amount of discussion addressed to civilians. Even if this is necessary in war time, a statute making such a result possible should not be passed in time of peace.

I believe that our armed forces and the great mass of our people are intensely loyal to the Government and that one reason for this loyalty is the scope which our laws permit for freedom of discussion. Any real plot to bring about a change can be severely dealt with under the two conspiracy statutes. As for the speeches and pamphlets which are not sufficiently serious to fall within the conspiracy statutes, we can well afford to run what-

ever slight risk of trouble they create for the sake of the freedom which Thomas Jefferson believed to be the most precious possession of this country.

Simple as a law against incitement to force and violence appears on its face, it will be a very difficult statute to construe, unless the courts adhere closely to the ordinary rules of criminal attempt.

Of course, the man who shouts "We want to kill the President and blow up the Capitol," presents no difficulties.

The few plain cases, which are almost labeled "force and violence" will form only a small part of the prosecutions.

The question is whether anyone can draft a statute which makes it possible for fallible human beings to distinguish good attacks from bad attacks which sound as if they were good.

It is the old case of Mark Anthony's funeral oration. Does a man advocate force and violence when he uses comparatively innocent words with the intention of producing assassination and revolution?

Or must the statute be confined to words which taken by themselves are directly provocative of assassination and revolution?—*Extracts, see 1 and 8, p. 256.*

Editorial, The Nation

★ *The Nation characterizes the McCormack bill as designed to lay a broad basis for attempt to interfere with the freedom of speech.*

THE sedition bill which slipped through the Senate by unanimous consent, now (as HR 5843) is certain to pass the House if it comes to a vote. So we are close to the enactment of a bill as dangerous to democracy as anything since the Espionage Act of 1917. The Senate text has been modified by the House Military Affairs Committee. The bill now requires proof of intent on the part of those charged with inciting soldiers and sailors to disobedience. The words "military and naval forces" have been changed to "army and navy," but this alteration is worthless if it is meant to keep the bill from safeguarding martial law, since legally the army includes the national guard. The description "regular" should be inserted before army.

The language of the bill loses its apparent innocence in a study of the Espionage Act and what happened under it, for that act too appeared innocent. But it will be recalled that the Circuit Court of Appeals, overruling Justice Learned Hand in the *Masse* case, found that "the utterance of words which may cause insubordination" came within the meaning of the statute. The present bill would punish all who "advise or counsel, or publish material which advises or counsels disobedience." So it is left to the courts to decide whether advice and counsel

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Johnson, *Cont'd*

the National Student League, American League Against War and Fascism, and Young Communist League of America are leaders, but often appearing on campuses of leading colleges and universities as "Liberal Clubs," when not permitted to operate under their real name.

The mission of the Communist Party is to overthrow the Government of the United States by the employment of force and violence, which in other words means by wholesale slaughter; to accomplish this it is necessary to disarm our forces by any manner of means possible; to bore into the ranks of the Army and Navy and their components for the purpose of securing their assistance but especially to secure the necessary arms, ammunition, and equipment with which to conquer and destroy our own people.—*Extracts, see 1, p. 256.*

by Commander S. A. Clement, U.S.N.

★ *Commander Clement describes efforts by Communists to create disaffection among the enlisted men of the Navy and urges passage of the McCormack bill.*

THE Communist Party and its affiliated organizations realize that they cannot carry out a successful revolution until the armed forces or at least a part of them are ready to join in the revolution. Hence we have the reason for the intense activity on their part to create disaffection, disobedience, and disloyalty among the armed forces.

Some of the following methods are known to be used by Communists to contact Naval personnel:

Small groups, consisting of, say 2 men and 3 girls, will come aboard ship with the regular crowd of visitors and sightseers. The men of this group will circulate about the decks, stuffing their handbills into boats, behind ventilators, etc., where members of the crew eventually find them, read them, and then generally turn them over to the executive or the officer of the deck. Meanwhile, the girls of the group—chosen for their good looks—will be picking out promising-appearing enlisted men, engaging them in conversation with the object of making dates with them ashore and working on them there to convert them to the cause and thus gain a recruit within the ship's company. Once gained, a cell is formed through which others may be talked over into joining. The same general method is used at shore stations. In the Navy yards and arsenals the objective is to have men in strategic positions for sabotage.

The following is an affidavit statement made by one Richard Pittman, representing himself as spokesman for the Young Communist League. This statement was made before a student gathering on January 30, 1935, at the University of Chicago.

"We Communists in the United States will fight in defense of the Soviet Union and will go into the United

States Army to get arms for the proletariat to sabotage the United States Army and to destroy the Government of the United States."

The Communist Party, the Young Communist League, the National Student League, the American League Against War and Fascism, and the many other affiliated organizations, are each day becoming bolder in their agitation in the work against the national defense.

This is evidenced by the vast increase in propaganda distributed. The papers, pamphlets, leaflets, etc., are hundreds. Everywhere the fleet goes the same type of pamphlets, leaflets, show up, and in many cases, the same agitators appear; for instance, a prominent Communist agitator who had been on the west coast immediately showed up on the east coast when the fleet arrived. It is certain that there is a well-trained organization in charge of the work of distributing propaganda among the naval personnel. I have numerous exhibits which will show the extent of this propaganda.

From these may be seen the insidious and widespread propaganda being disseminated among the armed forces of the United States. This propaganda runs the entire radical gamut from inciting to dissatisfaction and disaffection to sabotage and actual mutiny.

When one considers the possible dire results of this drive to incite disloyalty in the personnel of our fine Navy, I believe they will see the wisdom of this proposed legislation.

The British Parliament has recently enacted a similar, but far more drastic, measure.—*Extracts, see 1, p. 256.*

by Thomas W. Hardwick,

Former U. S. Senator, Georgia, Democrat

★ *Senator Hardwick argues that the Constitutional guaranty of free speech does not include advocacy of the overthrow of the Government by force.*

UNDER our constitutional guarantee of freedom of speech and freedom of the press it is the fundamental right of any and every person in this country to advocate any conceivable change in our Government; he, or she, may advocate the establishment of an absolute monarchy, or a Fascist government, or a Soviet republic, or of anything between all of these extremes.

But the guarantee of freedom of speech and freedom of press does not mean that any individual is entitled to advocate the destruction of our existing Government by force or violence or the substitution of the bullet and the bomb for the ballot. He is at perfect liberty to advocate any governmental changes that he pleases, but an individual may not advocate the right of a minority to overthrow existing Government by force and thus impose its will upon the majority of our people.

It is one of the inalienable rights of Government to

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Nation, *Cont'd*

are to be measured by possible results. The insertion of the proof-of-intent clause in the present bill does not save it from being a sweeping denial of freedom of speech. For during the war the courts ruled that intent might be inferred from the reasonable effect of a publication. Thereupon, to quote Chafee's "Freedom of Speech,"

"... it became criminal to advocate heavier taxation instead of bond issues, to state that conscription was unconstitutional, though the Supreme Court had not yet held it to be valid, to say that the sinking of merchant vessels was legal, to urge that a referendum should have preceded our declaration of war, to say that war was contrary to the teachings of Christ. Men have been punished for criticizing the Red Cross and the Y. M. C. A., while under the Minnesota Espionage Act it has been held a crime to discourage women from knitting by the remark: 'No soldier ever sees the socks.'"

When the Espionage Act was passed the public had no inkling how it would be used, and Congress did not weigh the measure with any understanding of its implications. Nobody foresaw the blight it would prove to genuine Americanism. But now the country has had experience with this kind of "innocent" legislation, and should be on its guard. For the Espionage Act can be pleaded the extenuating circumstances of war and the lunacy it engendered. No such excuse can be offered now. This sedition bill is a clear attempt to lay the broadest possible legal basis for the suppression of free speech and a free press in times of civil disturbance. It is not as though the army and navy have no legal means to punish incitement to mutiny. Both forces have existed without this proposed legislation for a century and a half, and nobody asking for this bill is able to supply the slightest evidence that it is needed for the protection of military and naval discipline. If the national guard is used to break a strike, or if martial law is invoked, any critique of these measures as policies becomes criminal. A newspaper expressing doubt of the wisdom of its elected representatives at such a time can be seized, and its editors fined and imprisoned. It would become criminal merely to object to the presence of troops in a city where there was an industrial conflict. The aim of the bill is better understood, too, in knowing that it is sponsored chiefly by chambers of commerce from all parts of the country, by their agents in Washington, and by the business men's lobby advising the President through Secretary Roper. What they want is plain enough. If it comes to a test of democracy, in which labor seeks to wrest a greater share of economic power from management by withholding its services, business intends to throw the national guard and the courts into its fight to maintain supremacy. This is pure fascism, differing no whit from the familiar technique of Hitler and Mussolini. This fascist bill will pass unless it gets lost in the pressure of legislation at the close of the session. Also it is easy to divert attention from its real purpose by pretending that it applies only to Communist agitation in the regular army and navy. The National Publishers' Association, as quick as lightning in defending the freedom of the press when the employment of child labor and union reporters is under discussion, refuses to lift a finger to defeat this bill.—*Extracts, see 7, p. 256.*

by Professor K. U. Llewellyn,

Columbia University Law School

★ Professor Llewellyn argues that the McCormack bill is unnecessary because the Army and Navy can and does easily stamp out disaffection in their ranks whenever it occurs.

I WANT to make clear that in the bill as drawn, I find no reference to communism, no reference to the overthrow of the Government by force and violence at all. I wanted to say, and I think it is worth leaving clear, that the professed purpose of the bill is not carried out by the bill.

For example, in the title we have reference to attempts to incite members of the United States forces to disobedience, and when you turn to the text of the bill, we find, instead of attempts which imply willfulness, deliberation, intent—instead of that, we find such language as "advises, counsels, urges," which might be perfectly well done by inadvertence. The text of the bill, which carries the meat of the bill, has nothing about willfulness or deliberation in it.

When you turn to the second clause of the first section, you find "whoever publishes or distributes any book, pamphlet," and so forth, "which advises, counsels, urges," that does not require it to be a direct counseling; it does not require it to be addressed to the person in question. It relates merely to a book which can be construed by a jury to contain advice to disobey some regulation, which might fall into the hands of some member of the United States military or naval forces, or the reserves.

In other words, we are dealing here with a penal law so loose, so broad, so indefinite and so impossible of clean-cut application that it is a menace to anybody.

My first argument is that this bill as drawn does not fit the purpose for which it is drawn.

Its object is covered, as soon as an incitement takes effect, by section 88 of the Criminal Code, as to conspiring to commit an offense against the United States by two or more persons, and that takes only one inciter and one who listens, but if two or more persons conspire either to commit any offense against the United States, or to do the other things not material here, there is a handsome penalty, definitely greater than the penalty of this bill.

Now, if it is true, as has been suggested here that there is in fact only an infinitesimal amount of disaffection in the forces, then I think we may rely with perfect certainty upon the fact that the mates of the man in question, if he is incited to move to commit any offense against the United States, will find him, and he will be subject to a penalty of not more than 2 years or a fine of not more than \$10,000 under section 88.

I see no reason, therefore, for this bill in any form, since we already have a clean-cut statute there that takes care of the thing the minute that it raises its head.—*Extracts, see 1, p. 256.*

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Hardwick, *Cont'd*

defend itself against assaults of that character and with the Government, as the individual, self-preservation is the first law of nature. This principle has been uniformly recognized by our courts, and I need refer only to the single case of *Gilow v. The People of New York* (268 U. S., p. 652), in which this principle is both clearly enunciated and completely asserted.

It might be of some interest to know something of the extreme care and deliberation with which I have arrived at the sentiments above expressed. While I was a member of the United States Senate during the war period I opposed the passage of the Espionage Act on the ground that part of the act which penalized seditious acts or words in time of war was so broad as to be capable of the construction that anyone who opposed any particular plan advocated by the administration or the Government in the conduct of the war might come within its terms and that the freedom of speech and opinion might be stifled thereby.

At a somewhat later period I represented professionally the Russian Government in an investigation of the charges that a person who held himself out to be its ambassador was endeavoring to stir up sedition in this country. I accepted this employment and performed this service at a time when the tide of prejudice on this subject ran unjustifiably high. Later I represented certain defendants in the prosecution of an appeal to the Supreme Court of North Carolina, growing out of the strike at Gastonia, in which appeal was sought to vindicate the right of religious freedom in North Carolina. This service was undertaken at the instance of and by the employment of the American Civil Liberties Union.

I merely cite all these instances to show that my background is one of intense devotion and unquestioned loyalty to the constitutional principles of freedom of speech, freedom of religion, and freedom of the press. At the same time I do not think that freedom of opinion or freedom of speech authorizes any person living under the protection of our Government, Constitution, and laws to advocate the destruction by force or violence of the very Government that guarantees to him these essential principles of human liberty. His right to agitate any change that he desires, to criticize any official from the President down whose conduct he does not like, and to urge the repeal of any law to which he is opposed, should remain forever inviolable and unchallenged, but at the same time he has no right to advocate the employment of force and violence to accomplish the overthrow of the Government in order to carry his opinions into effect.

I think I may with propriety add that the investigation made by the special committee on un-American activities, for which I was counsel, plainly disclosed the necessity for some legislation of this character.—*Extracts, see 2, p. 256.*

by the Supreme Court of Pennsylvania

★ *In a decision in the case of Commonwealth v. Widowich, Jan. 7, 1929, the Supreme Court of Pennsylvania holds that the Pennsylvania sedition law does not interfere with free speech.*

It may be well at the outset to understand just what the legislature intended. The act makes sedition a felony, and sets up situations that warrant a conviction for it. The burden of the act is an effort to preserve the State, and it should be so interpreted. The act protects the life of the State from direct assault by force or intimidation, or from an indirect assault through the machinations of an individual or a group who teach, advocate, or encourage others to attack with force with intent to destroy or to terrorize its officials through fear of harm, injury, or destruction, with like purpose. This is accomplished by punishing those individuals who would by force overthrow it. Intent to destroy or overthrow the Government is made an essential element of the crime. Intent or purpose is shown or may be inferred from the normal result of committed acts—an end that an ordinarily prudent person would naturally expect from the act.

In some of the offenses the legislature had determined the doing of the act involved a danger to the State, as teaching, or sale of writings, etc. The statute has no relation to acts of persons, criminal or civil, which may be termed offenses or wrongs against persons as persons or property as property, and which cause incidental harm to the structure of the State.

The act does not emasculate political discussion. Government officers, the conduct of public officials, and the laws themselves may be criticized without fear of punishment unless the statements should happen to be maliciously false, and then punishment is meted out in the terms of injury to an individual. Remedies for the relief of supposed wrongs or the redress of grievances may be suggested and urged without fear of punishment, as provided by article I, section 20, of our constitution. Books which treat historically of past revolutions, the doctrines of the various forms of governments, books, and essays on sociology and economics, which treat on the various influences in government and their possible elimination, or their supposed peril, the writings of reformers—all these may be safely offered for sale or taught as they are now in our educational institutions. Freedom of thought, speech, and the press is as extensive since the passage of the act as it was before. The Sedition Act does not attempt to interfere with these rights; it contemplates a higher and broader ground. The danger line in utterances is reached when one strikes at the very foundation of organized society by inciting rebellion in an attempt to destroy it.—*Extracts, see 2, p. 256.*

by The American Civil Liberties Union

★ *In a memorandum on freedom of speech and press the American Civil Liberties Union argues that criticism of government is a fundamental right and should not be abridged.*

ANYONE familiar with the history of political and economic ideas can not fail to realize that majorities are temporary and that the heresy of one generation becomes the orthodoxy of the next. Under a form of government such as ours it follows as a necessary conclusion that political and economic ideas should only stand up as long as they justify themselves in the common benefit. Under the tendency doctrine of the English common law of sedition the existing order could and did guard itself from having to justify its position by knocking down all criticism that might tend to create an ill opinion of it. In other words no matter how great the fallacy of its benefits the government could not be brought to the bar of truth to justify its existence.

Not only should the government itself as separate from the people be compelled to justify itself, but the majority also should not be allowed to perpetuate itself by force but only as it can justify itself on the basis of the common benefit.

Especially is this true in times of stress when the majority is strongly tempted to stamp out all opposition. This is just the time that the voice of criticism is most needed to examine each act to make sure that ill considered measures are not rushed through and that the majority does not ride rough shod over the inalienable rights of man.

True the right of absolute free freedom of criticism might lead to abuse, but that is no argument against it. "Some degree of abuse is inseparable from the proper use of everything and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the states, that it is better to leave a few of its noxious branches to their luxuriant growth than by pruning them away, to injure the vigor of those yielding the proper fruit." (Writings of Madison, Vol. VI, p. 389.)

Who in any society can be sure which is noxious and which is not? Who could possibly have the wisdom to foresee which particular economic and political need is to justify itself in the future on the basis of the greatest common benefit? Anyone who assumes the responsibility of punishing the utterances of political and economic creeds, no matter how drastic because of their tendency to create hatred and ill opinions of the existing order, in fact says the *status quo* is the best to assume the common benefit. He is treading on the dangerous and fallacious ground of laying down an absolute rule that

society as now constituted is "the best of possible worlds."

The framers of the constitution must have been aware of the English abuses under the name of treason. They also must have known the history of statutes passed subsequent to 1352 some of which had gone so far as to punish mere words as treason (Stephen, Vol. II, Chapter XIII). True, these statutes did not enter into the law of England as of the date of the framing of the constitution, but there was always the danger of similar laws being passed.

In framing Article III, Section 3 they evidently intended to guard against such abuses as existed in the English law. It would seem to follow that in limiting the meaning of treason, they meant to express that the oppositions to the existing order that had been punished in England as treason were to be pursued here without fear of punishment. Opposition and criticism of the existing order is fundamental in a government founded on the principles that ours is.

It would seem an abuse of power to punish what had formerly been treason in England and which is excluded from our meaning of treason by merely shifting names and prosecuting for seditious libel. In England the question of whether one is to be punished under one name or another raises no issue for Parliament, being omnipotent, can punish whatever it wishes under any name and in any manner. That however is not the case here and the legislatures must not destroy right guaranteed by the constitution.

It may be contended that treason is the highest of crimes and only includes extreme acts against the State and that Article III did not contemplate prohibiting the punishment of lesser acts against the State. There would be basis for such a contention if some extreme penalty were provided for what the constitution defines as treason. However this definition of treason is not set apart from lesser oppositions to the existing order to be treated by a specially severe penalty. Instead the severity of punishment is left to the discretion of Congress. This would seem to indicate that this definition covers the ground in this field and leaves no room for the doctrine of seditious libel.

Even if this position is not maintainable in its entirety, there is a definite declaration against arbitrary prosecuting for opposition to the existing order in requiring not only an overt act but two witnesses to it. This clearly shows a policy of only punishing where the offense is established to an extent not required in ordinary private crimes. Therefore if lesser oppositions to the existing order are to be punished as crimes the same policy should cover them—a policy that requires the most stringent proof and declares that only the clearest of cases are to come within the reach of the law.—*Extracts, see 6, p. 256.*

Digest of State Laws on Sedition, Anarchy and Disloyalty

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Penalty, imprisonment for not less than 2 years nor more than 6 years or a fine of not more than \$5,000.

Massachusetts (1919)—Advocating by speech or written document or circulation thereof, assault on a public official, killing of any person, unlawful destruction of real or personal property, the overthrow of the Massachusetts government by force or violence, declared unlawful. Penalty, imprisonment for not more than 3 years or a fine of not more than \$1,000, or both.

Mississippi (1920)—Advocating, verbally or by print or otherwise, the overthrow by violence of the Constitution or Government of the United States, declared a felony. Penalty, imprisonment for not less than 3 nor more than 20 years.

Montana (1919)—Spoken or written utterance of any disloyal or slurring language about the Government of the United States or the form of the Government of the United States, its flag, army or navy, etc., declared to be seditious. Penalty for those found guilty of sedition, imprisonment for not less than 1 nor more than 20 years, or fine of not less than \$200 nor more than \$20,000 or both.

New Hampshire (1919)—Advocating forcible overthrow of the Government of the United States by publishing any printed matter or assembling for that purpose, etc., unlawful. Penalty, imprisonment for not more than 10 years or fine of not more than \$5,000 or both.

New Jersey—Advocating subversion, destruction or opposition to the Government by speech, writing or becoming a member of an association for that purpose, circulation of literature, etc. Penalty imprisonment at hard labor for not exceeding 15 years or a fine not exceeding \$2,000 or both. Assaulting President, Vice-President, etc., with intent to kill, thereby showing hostility to any or all government, punishable by death, unless the jury recommends mercy. Encouragement of assaults upon the United States Army, the National Guard or the police is a misdemeanor. Printing, publishing or circulating writings inciting sedition, unlawful. Penalty, imprisonment not exceeding 20 years or fine of not more than \$10,000 or both; opposing enlistment, imprisonment for not more than 7 years or a fine of not less than \$100 nor more than \$2,000 or both.

New Mexico (1919)—Performance of any act designed to destroy organized government unlawful. Penalty, imprisonment for not less than 90 days nor more than 1 year, or fine of not less than \$200 nor more than \$500.

New York (1909-1920-1923)—Advocacy of overthrow of Government by force by speech, writing, publication, organization, etc., declared a felony. Penalty, imprisonment for not more than 10 years and fine of not more than \$5,000, or both. Owner, agent or superintendent of a building who allows his premises to be used for the above purposes guilty of a misdemeanor. Penalty, imprisonment for not more than 2 years and fine of not more than \$2,000, or both. Public officer guilty of treasonable or seditious acts or utterances, removable from office. Use of text books containing seditious or disloyal matter prohibited.

North Carolina (1868-1871)—Rebellion against State of North Carolina, punishable by imprisonment for not more than 15 years and fine of not more than \$10,000; conspiracy to rebel against state, imprisonment for not more than 10 years and fine of not more than \$5,000; organizing secret political or military organizations, fine of not less than \$10 nor more than \$200 or imprisonment or both.

Pennsylvania (1919, 1921)—Advocacy of overthrow of government of Pennsylvania or the United States by force or violence by speech, writing, organization, etc., unlawful. Penalty, imprisonment not exceeding 20 years and fine of not less than \$100 nor more than \$10,000, either or both.

Rhode Island (1919)—Inciting by speech or writing, opposition against the United States by speech, writing, teaching, conspiring, etc., prohibited. Penalty, imprisonment not exceeding 10 years or fine of not more than \$10,000 or both.

Tennessee (1715, 1859, 1865)—The uttering of seditious words or speeches, inciting rebellious conspiracies, etc., prohibited, and punishable by fine and imprisonment.

Texas (1918)—Disloyalty expressed in speech or writing or any other way to United States punishable by imprisonment for not less than 2 years nor more than 25 years.

Vermont (1919)—Advocacy of overthrow of government of Vermont by force or violence declared unlawful. Penalty imprisonment for not more than 3 years or fine of not more than \$1,000 or both.

Washington (1909)—Overthrow of Government by force or violence by speech, writing, publication, teaching, organization, etc., declared to be criminal anarchy. Penalty imprisonment for not more than 10 years or fine of not more than \$5,000, or both.

Wisconsin (1903, 1925)—Advocacy of overthrow of Government by force or violence, by word of mouth, writing, publication or organization declared a felony. Penalty, imprisonment for not less than 3 years nor more than 10 years and fine of not more than \$5,000 or both.—*Extracts, see 2, p. 256.*

A Digest of Sedition Laws in Principal Foreign Countries

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ishment by confiscation of his property or by "the supreme measure."

Anyone guilty of any kind of activities directed to the preparation or commission of some of the crimes described in the Criminal Code are punishable by the punishment prescribed for the respective crimes. This provision covers the advocacy or plotting of counter-revolutionary crimes.

The failure of denouncement of a known contemplated or committed counter-revolutionary crime is punishable by imprisonment for not less than 6 months nor more than 5 years.

Subversion of the Governmental industry, transportation, commerce, currency circulation or credit system or organizing for counter-revolutionary purpose, or using governmental institutions or enterprises for that purpose or raising obstacles to their normal activities, or any subversive activities in the interest of the former owners of these enterprises or any capitalists organization concerned is punishable by "the supreme measure of social protection."

Yugoslavia—In 1929 Yugoslavia enacted a law for the protection of public safety and order in the realm in which is set forth a code of political offenses triable before a special court. Attacks on the life of the King, or President, accomplished or attempted, is punishable by death. Lesser punishments are prescribed for advocacy of the overthrow of the government by force. The legal definition of "attempt" under the Yugoslavian law is "He who commenced the commission of a crime but did not accomplish it."

A Glossary of Words and Terms Found in This Issue

Alien—One owing allegiance to another State; a foreign-born resident of a country in which he does not possess the privileges of a citizen—*Webster*.

Anarchy—The state of society where there is no law or supreme power; hence, a state of lawlessness or political disorder; avowed hostility to all governments, and open antagonism to all political parties, every one of which professes to support some form of government—*Webster*.

Capitalism—As used by Communists the terms capitalism and capitalistic indicate all social systems in which private ownership and control of industry exists.

Censorship—The examination and supervision of written or printed material by an official before publication.

Civil Liberty—The liberty of a member of society, being a man's natural liberty, so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public (1 Bl. Comm. 125; 2 Steph. 487). The greatest amount of absolute liberty which can, in the nature of things, be equally possessed by every citizen in a State (Bouvier). Guaranteed protection against interference with the interests and rights held dear and important by large classes of civilized men, or by all the members of a State, together with an effectual share in the making and administration of the laws, as the best apparatus to secure that protection (Lieber Civ. Lib. 24).

Communism—A system of social organization in which goods are held in common;—the opposite of the system of private property; or any theory or system of social organization involving common ownership of the agencies of production.

Espionage—The practice of spying; a systematic secret observation of the words and conduct of others. Obtaining information in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

Fascism—The form of government now obtaining in Italy. The term is taken from the Latin word "Fasces," a bundle of rods having among them an axe, with the blade protruding, and forming the badge of authority of a Roman censor or magistrate. Hence the term Fascism indicates strong central authority.

The Fascist system is one of corporate control by the Government of all industry with a planned economy for the entire nation. In Italy Benito Mussolini is Prime Minister and from time to time holds whatever other cabinet offices he desires to take over to enable him to control that branch of the Government. The Fascist party of which Mussolini is "Il Duce" or The Leader, controls all offices in Italy. The basic idea of Fascism is that all individuals are subordinate to the state.

Freedom of Speech and the Press—Court decisions in the United States have generally been to the effect that freedom of the press, as guaranteed by the Constitution, consists of the right to print what one chooses, without previous license, but the author or publisher is subject to be held responsible for the abuse of the privilege and for what he writes or publishes. Slander is an abuse of the liberty of speech and libel is an abuse of the liberty to write and print, but it is nowhere expressly declared in the law that these are the only abuses of such rights.

The right to print and publish the truth, from good motives and for justifiable ends. *People v. Crosswell* (3 Johns, Cas. 394). The right freely to publish whatever the citizen may please, and to be protected against any responsibility for so doing except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offense, or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals (Cooley, Const. Lim. p. 422).

Nazi-ism—The term Nazi is a combination of two syllables, taken from the first syllable of Nacional and the second syllable of Sozialistische, or National Socialist, the name of the political party now in control of Germany. Naziism, like Communism and Fascism holds the individual subordinate to the state.

Overt Act—In criminal law, an overt act is "an outward act done in pursuance and manifestation of an intent or design—the mere design or intent not being punishable without such an act."

Personal liberty—The right or power of locomotion; of changing situation, or moving one's person to whatever place one's own inclination may direct without imprisonment or restraint, unless by due course of law.

Political liberty—Liberty of the citizen to participate in the operations of government, and particularly in the making and administration of the laws.

Religious liberty—Freedom from dictation, constraint, or control in matters affecting the conscience, religious beliefs, and the practice of religion; freedom to entertain and express any or no system of religious opinions, and to engage in or refrain from any form of religious observance or public or private religious worship, not inconsistent with the peace and good order of society and the general welfare.

Sedition—Conduct tending to treason, but without an overt act; excitement of discontent against the government, or of resistance to lawful authority.

Sedition is defined as follows in Abbott's Law Dictionary (v. 2, p. 456): "Conduct tending toward treason, but wanting an overt act; attempts made, by meetings or speeches, or by publications, to disturb the tranquility of the state, which do not amount to treason. All contempt against the sovereign and the Government, and riotous assemblies for political purposes, may be ranked under the head of sedition." The Missouri supreme court, in *State v. Shepherd* (76 S. W. 83) said "In England it was an offense, called

'sedition,' to speak or write against the character and constitution of the Government, or to seek to change it by any means except those prescribed."

Socialism—A political and economic theory of social organization, the essential feature of which is governmental control of economic activities, to the end that competition shall give way to cooperation and that the opportunities of life and the rewards of labor shall be equitably apportioned.

Socialism is often used to denote specifically the economic theories developed especially by Ferdinand Lasalle and Karl Marx advocating the annulment of private ownership of capital and land and maintaining that all values are the creation and just due of labor. Socialism of a more idealistic sort appears in the antiutilitarian and aesthetic theories of production of Ruskin and William Morris which have also found some following in America.

In question of policy, opportunist or conservative socialists are distinguished from revolutionists or radicals. The latter have been more or less associated with anarchism, and socialism is often confused with anarchism. Socialism advocates, however, a powerful central government, anarchism opposes all government as evil; both, however, are forms of communism, sharing the ideal of a cooperative society.

The word *socialism* dates from about 1835 and seems to have originated in several quarters simultaneously. Leroux claims to have invented it as an antithesis to *individualism*.

For the purpose of modern discussion, socialism may be described as that policy which aims at a more equal distribution, and in subordination thereto, a better production of wealth by means of the direct action of the central authority—*Webster*.

Subversive—Having a tendency to overthrow and ruin.

A Description of the Comintern

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to bring every capitalist state within its domination.

A reliable index to this purpose is found in the *Pravda*, the official organ of the Russian Communist Party. In its issue of September 1928, appear these characteristic words:

"The world-wide nature of our program is not mere talk, but an all-embracing and blood-soaked reality. It can not be otherwise. * * * Our ultimate aim is world-wide communism; our fighting preparations are for world revolution; for the conquest of power on a world-wide scale and the establishment of a world proletarian dictatorship. * * *"

One of the early acts of the Soviet Government in December, 1927, was to pass a decree appropriating 2,000,000 rubles for international revolutionary purposes.

This world revolutionary movement is now being carried on actively in some 50 different countries, where communist parties have been established, all subject to the orders and instructions of the Third International at Moscow. The Third International reports from the Soviet headquarters at Moscow propaganda campaigns being waged in the following countries: Germany, Great Britain, Ireland, France, Italy, Belgium, Holland, Sweden, Norway, Denmark, Czechoslovakia, Austria, Hungary, Yugoslavia, Rumania, Bulgaria, Greece, Switzerland, Spain, Portugal, Poland, Finland, Estonia, Latvia, Lithuania, United States, Canada, Mexico, Cuba, Columbia, Ecuador, Uruguay, Chile, Argentina, Brazil, Turkey, Persia, Syria, Palestine, Egypt, Japan, China, Korea, India, Indonesia, Australia, and South Africa.

By the exact words of the Communist International the United States is included in this list of countries.—*Extracts, see 9, p. 256.*

Sources of Material in This Issue

- 1—Hearings, House Committee on Military Affairs, March 1, 19, 1935.
- 2—Hearings, Subcommittee No. 2, House Committee on the Judiciary, May 22, 1935.
- 3—From Report of House Committee on Military Affairs, on S. 2253, July 22, 1935. Report No. 1603, 74th Cong. 1st sess.
- 4—From Report of House Committee on the Judiciary on HR 6427, Report No. 1869, 74th Cong. 1st sess.
- 5—Radio Address, February 19 (Congressional Record, February 20), 1935.

- 6—Memorandum of American Civil Liberties Union, New York City, in opposition to Proposed Sedition Legislation.
- 7—Editorial, *The Nation*, July 31, 1935.
- 8—From "Freedom of Speech, by Zechariah Chafee, Jr., Harcourt, Brace & Howe, 1920.
- 9—From Report of Special Committee of House to Investigate Communist Activities in the U. S., January 17, 1931, Report No. 2290, 71st Cong. 3rd sess.

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